Q. And how long have you been engaged in this practice of leasing for a period of six months?

A. Since 1942.

Q. And up to this time there has been no objection for that period. You have not run into any difficulties as a result of leasing for that period?

A. Yes, we had to give 30 days' notice on V-J Day.

Q. That was an unusual situation, was it not?

A. That was a situation. A situation such as that or even [fol. 2628] of much less consequence could affect the lease of the vehicles.

Q. Have you had any other except V-J Day which you can remember, which caused the cancellation of a lease?

A. No, we have not.

Q. Have you had occasion to support carriers to obtain temporary authority to perform special movements for you?

A. We have.

Q. During the war you had no difficulty in getting those promptly on behalf of the Government, did you?

A. No, we had no trouble.

Mr. Eldred: That is all I have; thank you.

By Mr. Todd:

Q. Do you lease these trucks and drivers or just the truck?

A. I think I stated just the truck.

Q. And you have been getting just these motor vehicles under lease from authorized carriers; is that correct?

A. We have.

Q. Do you know if this Commission should prohibit authorized carriers from leasing trucks to you in that manner, whether you could obtain the same type of trucks under similar circumstances from persons who are engaged exclusively in the leasing business and hold no authority from Commissions? I mean such as Hertz Drive-it-Yourself.

A. I could; yes, sir; and if I could not obtain them I would buy them.

[fol. 2629] Q. You could obtain these trucks from Hertz or someone else under the same circumstances you do from an authorized carrier?

A. That is right.

Mr. Todd: That is all.

By Mr. McAuliffe:

Q. Do I understand the Aircraft Industries Association is making some investigation of the matter of leasing and you have participated in that investigation?

A. It has been on the docket of our various committees since this procedure was first investigated.

Q. You participated in those investigations yourself?

A. In those discussions.

Q. Has any member of the industry complained to you about the present leasing practices, or complained that there are abuses in the present leasing practices?

A. No, sir.

Q. You said before you would lease a vehicle you would investigate the character of the vehicle and its compliance with safety requirements; is that correct?

A. That is correct.

Q. You have also leased vehicles from authorized carriers and others than authorized carriers in the past?

A. You mean garages, and so forth?

Q. Yes.

A. That is correct.

Q. Based on that experience, which type of vehicle [fol. 2630] would you say would comply more closely with the Commission's safety requirements, those of the authorized carriers or those of someone other than authorized carriers?

A. I don't think there would be any difference. I have heard no discussion, and, in my own experience, I have seen no difference in the vehicles.

Exam. Lawton: Do I understand that all of the equipment used by your company has to be of a special type?

The Witness: No, sir; it does not have to be of a special type—not all of it—but there are certain operations where special types of equipment is a necessity due to quick turnarounds that must be made.

Exam. Lawton: In those instances you can only obtain that equipment from authorized carriers?

The Witness: I could obtain them only from operators such as Hertz U-Drive-It and then place these racks in the

trucks at a variation of cost, but so far we have leased vehicles from common carriers that have been put in that service.

Exam. Lawton: You don't use owner-drivers?

The Witness: Oh, no, sir. We have not used owner-drivers.

By Mr. Jessup:

Q. How many pieces of equipment does your company operate not in interstate commerce? Do you have any idea offhand?

A. Approximately fifty.

Q. Fifty units in interstate commerce?

[fol. 2631] A. That is right. If you mean strictly interstate commerce——

Q. You mean that might be used in interstate commerce?

A. Might be used in interstate commerce; that is correct.

Q. And the leases of equipment from carriers might involve carriers who serve you as a common carrier or contract carrier, too; is that correct?

A. It could; yes, sir.

Q. Has it in the past?

A. Yes, it has in the past.

Q. Those carriers' equipment, I take it, is equipped with racks and so forth to meet your requirements?

A. That is correct.

Q. Then what would be the purpose of leasing that type of equipment from a carrier who serves you as a carrier?

A. When it becomes necessary for me to lease vehicles no other way of operation is open to me. That is the only reason that I lease. I have to lease.

I have had in operation, and I have one at the present time, between two of my plants. I don't know of any common carrier that could serve me adequately. It would be asking too much to even pay for it.

Q. I was interested because you mentioned in your testimony the necessity for having equipment to handle loads in both directions on an extensive basis which would be pretty good business for most carriers, I would think.

[fol. 2632] A. It would be excellent business for most carriers.

Q. But some other considerations enter into that?

A. There certainly are other considerations which I hope I have explained. One is that we use as many trucks in the operation as the carrier has altogether in his outside operation. Another thing is that we have to use our own driver. He knows the material, he knows how to handle it, he knows the importance of meeting schedules. We have full control over the vehicle. The vehicle is in our hands all of the time. It can move at our will.

Q. Have you made any study as to any difference in the cost to you of leasing equipment for that type of operation and the for-hire carrier cost to you?

A. I don't think it would be necessary to even make an estimate. It would be much cheaper, of course, for me to lease the vehicle.

Mr. Jessup: Thank you.

Mr. McAuliffe: I have just one more question, if I may.

By Mr. McAuliffe:

Q. Mr. Crook, do you know of any reason why the Commission should adopt any regulations governing the lease of trucks to your company by authorized carriers?

A. No, sir; I do not.

By Mr. Idol:

Q. Mr. Crook, are you familiar with the regulations proposed by American Trucking Association for adoption in lieu of those suggested by the Bureau?

[fol. 2633] A. No, I am sorry I am not.

Q. I would like to ask you to look at a copy of Exhibit 11 already in this record, Part IV, a very short paragraph, at the top of the page.

A. I have no objection to this as far as the carrier goes, but I don't want to be imposed with the regulation making me write the Commission.

Q. That would be a regulation designed to require the carrier to write the Commission?

A. I have no objection.

Mr. Idol: That is all I have.

Exam. Lawton: You are excused.

(Witness excused.)

Mr. Brashear: Thank you, Mr. Examiner, for according us this courtesy.

Mr. Goodman: I wonder if I may make a brief statement in lieu of submitting testimony in view of what the Examiner told me this morning?

I was under the impression the type of testimony I was to submit would not be cumulative but would be in addition to that already presented. I have handled operations for the Midwest Freight Forwarding Company, Chicago, Ill.; Mid-States Freight Lines, Chicago, Ill.; Cooper-Jarrett, Inc., Chicago, Ill.; Liberty Motor Freight Lines, Inc., Secaucus, N. J.; Spector Motor Service, Chicago, Ill.; Cooper-Jarrett, Inc., Trenton, N. J.; Kelleher Motor [fol. 2634] Freight Lines, St. Louis, Mo.; and Eastern Motor Express, Inc., Terre Haute, Ind. I have since learned that a witness representing Trans-American has testified.

Insofar as the testimony they submitted is concerned, it would be the same as we proposed to submit here insofar as operations between Chicago and the eastern seaboard.

We have nothing further to state in this record on that, but I did want the Commission to understand that the Middle West-Eastern Seaboard Conference, Inc., by unanimous vote, did adopt that testimony as their own, and in lieu of what was stated there the rules suggested by the American Trucking Association.

I think I would save the Commission a great deal of time by not putting my witnesses on and permitting those that are here with their witnesses to add to the case rather than for me to be cumulative.

Exam. Lawton: Does anyone else want to offer testimony?

Mr. Brown: I have a short witness.

Exam. Lawton: Very well.

ported in Atlantic Coast Line Railroad Company, Extension of Operations—Virginia-North Carolina, 30 M.C.C. 490, Docket No. MC-23542, Sub No. 1, 1941. At the hearing preceding the granting of our application our present method of operation was explained and received the tacit approval of the Commission. We have continued to operate under the plan and leasing arrangement that was explained at the hearing on our application.

Moreover, the certificate of public convenience and necessity issued to the Atlantic Coast Line in that proceeding contains specific conditions allowing the Commission to impose further restrictions upon our operations if the Commission should find it necessary. This gives the Commission a continuing and constant control of our trucking operations and is ample, we believe, to prevent any abuse by the Coast Line. For these reasons we believe that railroads offering only a coordinated rail-motor service and operating under such conditions imposed by the Commission, should not be included within the scope of the present proposed rules.

Q. Please state which of the proposed rules are objec- [fol. 2637] tionable insofar as the Coast Line's over-the-road truck service is concerned, and give your reasons for the objection?

A. The Coast Line objects to certain of the provisions of the order accompanying the proposed rules being made applicable to the railroads' substituted over-the-road truck service:

First, in regard to section (2) (a) of the order of the Commission. The question raised in the order is whether the renting of vehicles should be limited to long-term leases. This should be clarified to indicate what is meant by a long-term lease, whether one month, one year, or longer.

Section (2) (b) of the order questions whether the use of leased vehicles by motor common and contract carriers should be limited to a fixed percentage of the number of vehicles to which the using motor carrier holds title. The Coast Line strenuously objects to any regulation that might be made in this regard for the reason that at present our operations are conducted almost in their entirety with leased equipment. The Coast Line as a railroad has felt

that the small percentage of its operations which are conducted by truck could be better operated under a leasing arrangement. Our present operations have not resulted in any abuses to the public and we do not feel that they should be condemned merely because the Coast Line owns only a very small percentage of the trucks in which it is performed.

We further object to provisions of the proposed rules as follows:

[fol. 2638] Rule 2a(3); which reads as follows:

"* * * shall not permit use of the equipment for the transportation of property of the lawful owner of the equipment, or property which is in his custody or control as agent of shippers."

This proposed rule would handicap the operations of the Coast Line, which leases the equipment from the Railway Express Agency, if it should be construed to include property of the Railway Express Agency or traffic transported on Railway Express Agency bills of lading. Some such traffic is handled in over-the-road truck service for the convenience of the Coast Line. The Coast Line is obligated to haul express traffic between stations on its lines. At present some express traffic between these stations is handled on trucks leased from the Express Agency. In this connection it is presumed that if the Coast Line were to lease trucking equipment from persons other than the Express Agency, all traffic handled on the trucks would then be regarded as being in the custody of the Coast Line regardless of whether it moved on rail bills of lading or express bills of lading. The mere fact that the Coast Line does not lease from another party and does lease from the Railway Express Agency should not militate against us. For these reasons it would seem that traffic handled on trucks owned by the Railway Express Agency, or anyone else, when such equipment is operated in the Coast Line's over-the-road truck service, should be construed as being in the custody of the Coast Line, for the Coast Line holds the [fol. 2639] certificate of public convenience and necessity permitting the trucking operations, and the vehicles are based outright to the Coast Line.

Exam. Lawton: Off the record.

J. N. NEEDHAM was sworn and testified as follows:

Direct Examination

By Mr. Brown:

Q. Please state your name, position, residence, and occu-
[fol. 2635] pational experience?

A. J. N. Needham, supervisor of transfers, Atlantic Coast Line Railroad Company, Rocky Mount, N. C. I have been employed by the Coast Line for more than 28 years in the freight traffic and operating departments. In my present position I have for the past six years managed and directed the operation of the Coast Line's substituted over-the-road truck service.

Q. Are you familiar with the proposed rules governing motor truck operations which are under consideration at this hearing?

A. I have read the order and the proposed rules, and have studied them in regard to their effect upon the coordinated rail-motor service of the Atlantic Coast Line Railroad.

Q. In your opinion, what effect would the adoption of the proposed rules—by these proposed rules, I refer to the proposed rules which the Commission proposed—have upon the Coast Line's over-the-road truck service?

A. First, I would like to state that the Coast Line appreciates the importance of all necessary rules designed to avoid abuse of rights of motor carriers. Such abuse in the past may indeed be sufficient justification for more stringent regulation. This we do not protest. However, if all of the proposed rules were made applicable to the railroads' substituted over-the-road truck service it would seriously handicap such operations of the Coast Line, would probably impair the service given the public, and would not further the object of the Commission in promulgating these
[fol. 2636] rules.

The Coast Line provides coordinated rail-truck service on published rail rates under the approved general policy of the Commission. Our certificate of public convenience and necessity was obtained after a formal hearing before the Commission. This hearing on our application is re-

(Discussion off the record.)

The Witness: Proposed Rule 2b would prove very burdensome if it is construed to require a receipt to be given each time a truck makes a trip. At present the Railway Express Agency assigns trucks to our coordinated rail-motor service and these trucks are used only in such service until maintenance or other defects make it necessary for us to relinquish possession temporarily. It is our view that it should only be necessary to issue a receipt for the equipment when it is assigned to the carrier, and to obtain a receipt from the owner of the equipment only when the equipment is released from the carrier's service. Otherwise, the Coast Line would find it necessary to give meaningless daily receipts to the Express Agency, and vice versa. It is assumed that the receipt required by this rule would only be necessary at the beginning of the operation under the lease, and at its termination.

Rule 2c would prove objectionable if it is construed to provide that compensation for leased equipment on a cost-plus basis is not equivalent to the so-called "use" basis. Our present contractual arrangements provide that we shall pay the Railway Express Agency the actual cost of render-
[fol. 2640] ing the service plus certain fixed percentages. This has proved to be an equitable basis for compensation and is, in our opinion, included within the term "use" basis.

Rule 2f(4). At present the description and weight of express handled on trucks is not shown on the manifest maintained by the railroads for l.c.l. freight. To keep such records would materially burden the truck driver and delay the handling of freight at terminals. At present no manifest is kept by the Express Agency or the railroad on express shipments, and to obtain the information with respect to express shipments which the rule would require to be recorded on the manifest would compel the railroad to examine the delivery sheet which accompanies each express shipment. This delivery sheet is sealed and under present practices is not opened until arrival at destination. Furthermore, it does not show the weight because many such express shipments are not weighed until arrival at destination.

Present records do show the estimated total weight of

the express traffic carried on each truck, but not the individual weight of each shipment. The wording of the rule is not clear as to whether the description and weight required to be shown means the weight of the truckload or of each individual shipment. We would object to this rule if it requires such a record to be kept for each individual express shipment as it would be very impractical under present practices to ascertain that information. Present records do show the total weight of l.c.l. freight and of express traffic.

[fol. 2641] Rule 2h requires that the person assigned to drive the equipment operated be an employee of the lessee. It is our view that this requirement should be limited to requiring that the driver be under the actual management and control of the lessee carrier. It is often more satisfactory to contract for the use of trucks and drivers than to lease a truck and provide the driver. Our present practice is to use trucks and drivers of the Railway Express Agency. The provisions of the contract provide that we reimburse the Express Agency for the amount paid the driver, but the driver remains an employee of the Express Agency. It is more satisfactory for the railroads to use this method where the railroads' l.c.l. freight and Railway Express traffic are handled on the same truck, particularly where an employee of the Railway Express Agency has already established seniority rights for a truck route handling both railroad and express traffic. Otherwise it would probably be necessary to operate separate trucks and to provide separate drivers for the handling of such traffic. Needless to say, this would be a wasteful duplication of service. It might be necessary to curtail such operations with a resultant impairment of service to the public. It would also be unsatisfactory for a railroad to furnish equipment and an exclusive driver in its employment for a route requiring only part time work. Under the Coast Line arrangement, the vehicle and the driver are, in effect, a single unit, and this adds to the efficiency of the service.

[fol. 2642] Rule 2j provides that drivers of trucks be furnished copies of contracts covering leased vehicles. I presume that this regulation is imposed with the idea that it will make policing of the rules more feasible. In the case of carriers operating under long-term leases it would seem

unnecessary. The agreement under which the Coast Line and the Railway Express Agency are operating is on file with the district supervisor of the Bureau of Motor Carriers. The docket number of the permit under which we operate is inscribed on the vehicles we lease. Under circumstances such as these it would seem entirely unnecessary that the drivers carry a copy of the lease with them. The numerous copies of such contracts which it would be necessary to provide to comply with this rule, the furnishing of copies to new drivers obtained on short notice, and other such technical difficulties, would make burdensome the operation of this rule and could easily result in delays in truck service.

Rule 2k provides that the operations of paragraphs a, c, d, and h of this rule shall not apply to operations of any carrier which is operating in accordance with a plan heretofore submitted "in a formal proceeding and specifically approved by the Commission." It is our thought that the Commission might well scrutinize leasing arrangements between motor carriers in an informal proceeding and either indicate its approval or disapproval of such arrangements. Such informal proceedings should give the Com- [fol. 2643] mission the degree of control necessary and yet would not burden the carriers unduly. If many leases are made, or if the terms of the lease are comparatively short and require frequent renewals, the burden of getting approval in a formal proceeding would be considerable.

Q. Please state briefly the arrangement under which the Coast Line's substituted over-the-road truck service is operated, particularly with respect to the ownership of the motor vehicle equipment used in that service?

A. Our over-the-road truck service is operated under certificates issued in the name of the Atlantic Coast Line Railroad Company. As previously stated, almost all such over-the-road truck service is performed in trucks leased from the Railway Express Agency, which also furnishes the driver. Compensation is upon a cost-plus basis in accordance with contract existing between the Coast Line and the Railway Express Agency.

Q. Are the vehicle and driver subject to the direction and control of the Coast Line?

A. Yes, they are under the Coast Line's absolut direction and control. On this point I quote sections 4 and 7 from an agreement entered into between the Coast Line and the Railway Express Agency, dated May 25, 1942, and presently effective:

"(4) The Agency further agrees that said vehicles shall be operated upon and along said routes, or such part or parts thereof as the Railroad Company may designate, to and from the stations thereon, upon schedules prescribed [fol. 2644] by the Railroad Company, and shall be operated under the direction, management, control, and responsibility of the Railroad Company, which shall act through a representative, or representatives, designated to supervise, control, and manage the movement of said motor vehicles; and it agrees that said persons employed by the Agency to operate said vehicles shall be governed by, and comply with, instructions and directions of said representative, or representatives, of the Railroad Company as to the movements to be made by said motor vehicles, the time, or times, at and within which said movements shall be made, the manner and method of caring for and handling said freight, and the keeping of the records which may be required by the Railroad Company."

"(7) The persons employed by the Agency to operate said vehicles shall at all times conform to the general rules governing the conduct of employees of the Railroad Company, and in case any operator shall from any cause be objectionable to the Railroad Company he shall be removed or discharged upon the written request of the Railroad Company."

Q. Mr. Needham, under those conditions if a driver becomes objectionable from the standpoint of the Railroad Company, can you see that the driver is removed and so return the use of the truck or equipment?

A. Yes.

Q. Please explain more fully your arrangement for leas- [fol. 2645] ing equipment, and for what period of time such arrangements are to remain in effect?

A. In response, I quote sections 8 and 15 of the agreement just referred to, which agreement is still in effect:

"(8) The Agency agrees that said vehicles, leased under this agreement to transport said freight for the Railroad Company, shall during the period of this agreement be used and operated solely for that purpose; and that the Agency shall not transport on said vehicles any freight or property of any other person or company, or any express or property of, or in the care of, the Agency, other than that which the Railroad Company may direct to be transported on said vehicles."

"(15) This contract shall be in force and effect for a period of 18 months from the date hereof, and shall continue in effect thereafter unless terminated by either party on 60 days' written notice to the other party, said notice to the Railroad Company to be given to the treasurer of the Railroad Company, provided, however, that the Railroad Company shall have the right to terminate the contract at any time immediately upon written notice to the Agency in the event that the Railroad Company shall be prevented by law from performing its motor carrier operations . . ."

This lease arrangement has been in effect for six years.

Q. Please now state whether the Coast Line does actually control the operations of the trucking equipment and drivers?

[fol. 2646] A. Although the drivers of the over-the-road trucks receive their salary from the Railway Express Agency, which is, in turn, paid the Railway Express Agency by the Coast Line, the drivers receive their instructions from representatives of the Coast Line insofar as concerns the operation of the over-the-road truck service, including such details as the time to report for duty, schedules of the trucks, route to cover, and stations to serve. Furthermore, these drivers actually drive only such trucking equipment as is accepted by the Coast Line.

Q. Is the Coast Line's operation under its leasing arrangement with the Express Agency an operation of the Coast Line or the lessor?

A. It is a Coast Line operation. Our over-the road truck service is operated exclusively for account of the Coast Line, and handles only such traffic as is specifically designated by representatives of the Coast Line. That traffic consists of l.c.l. freight moving on railroad bills of lading,

and express traffic moving on Railway Express Agency bills of lading which the Coast Line elects to handle by truck rather than by rail for the Coast Line's own convenience. As previously testified, under our agreement with the Railway Express Agency no express traffic is transported in over-the-road truck service except that which the Coast Line may direct to be transported in such service. This provision of the agreement is strictly adhered to in actual practice. The Coast Line is solely responsible to the public for the operation. The leasing arrangement is not an operation [fol. 2647] of the lessor, inasmuch as the lessor is not privileged to determine what traffic shall be handled by truck.

Q. Please state whether all traffic transported in the Coast Line's over-the-road truck service is handled on published rail rates?

A. The rates applied to all traffic handled in this substituted truck service are the published rail rates, just as if no truck haul were involved.

Q. With the exception of the rules which you have indicated in your testimony, does the Coast Line object to the order and proposed rules of the Commission?

A. As I have previously indicated, the attitude of the Atlantic Coast Line Railroad Company is not in opposition to further regulation of leasing arrangements existing between motor carriers. We heartily favor curbing the various leasing arrangements which have resulted in such abuses as violation of tariff regulations and payment of rebates to shippers. However, we do not think that the Commission intended its proposed rules to apply to rail lines offering coordinated rail-motor service as no abuse is possible in such operations. If the Commission concludes that the proposed rules will apply to coordinated rail-motor service, then we do have the specific objections that I have indicated. These objections are not aimed at the purpose of the Commission in promulgating the rules, but rather at the indi- [fol. 2648] cated burdens which will fall upon the carriers unless the rules are altered.

In conclusion, may I say that we do not feel that our arrangement with Railway Express Agency is included in

the description of the violations complained of by the Commission.

Q. One further question, Mr. Needham: In regard to hours of service of employees, drivers, pay roll records—does the Coast Line maintain those records or does the Express Agency maintain them?

A. The records are filed with the Coast Line.

Q. Does the Commission hold the Coast Line responsible for maintaining those records?

A. That is my understanding.

Exam. Lawton: We will take a five-minute recess.

(Short recess.)

Exam. Lawton: Come to order.

Are you ready to cross-examine this witness?

Cross-examination

By Mr. Ellis:

Q. Mr. Needham, will you be good enough to turn to page 2 of your prepared statement, and in the second paragraph I note that you say you have continued to operate under the same circumstances which existed at the time you got your certificate. Is that right?

A. That is correct.

Q. That was an application for a certificate, however, and [fol. 2649] not an application for the approval of any kind of operation. That is correct, also, isn't it?

A. We did undertake to outline to some extent what the plan would be.

Q. But it was an application for a certificate. That is right, isn't it?

A. That is what the application was for.

Q. On page 3 of your prepared statement you say: "Our present operations have not resulted in any abuses to the public and we do not feel they should be condemned merely because the Coast Line owns only a small percentage of the trucks in which it is performed." You note that statement, do you not?

A. Yes.

Q. And at page 9 of your statement I note you say: "However, we do not think that the Commission intended its proposed rules to apply to rail lines offering coordinated rail-motor service as no abuse is possible in such operations."

Do those two statements correctly reflect your opinion?

A. Yes, sir.

Q. You haven't in your leasing practice been guilty of any abuses?

A. That is right.

Q. And it would be impossible for any abuses to occur?

A. I don't think of any.

Q. Then, if all the carriers in the country would adopt the [fol. 2650] method of operation that you have it would be utterly impossible for abuses to occur?

A. I could not answer for the other lines.

Q. I note at pages 1 and 2 of your statement you say "First, I would like to state that the Coast Line appreciates the importance of all necessary rules designed to avoid abuse of rights of motor carriers. Such abuse in the past may indeed be sufficient justification for more stringent regulation."

You were not talking about yourself, I understand, because you say you could not have any abuses, and did not have any. Who were you talking about?

A. I say "may."

Q. You said there were abuses but you did not put in any qualifications about that. Where did the abuses occur?

A. I said there may have been abuses.

Q. All right. Now, let's go again to the last page, page 9: "We heartily favor curbing the various leasing arrangements which have resulted in such abuses as violation of traffic regulations and payments of rebates to shippers."

There isn't any "may" about that in your statement, is there?

A. We have no objection to——

Q. Answer my question. That is a positive statement, isn't it?

A. Yes.

Q. I wish you would give names, times, and places of [fol. 2651] when, through leasing practices, there have been

rebates to shippers, and who the carriers were and who the shippers were that were responsible?

A. We say, "We heartily favor curbing various leasing arrangements which have resulted in such abuses." We are in favor of any arrangements of that kind. I am not going to undertake to say what abuses there have been.

Mr. Ellis: I am pointing out he is not answering my questions at all. He says such abuses occurred and I want to know where they were.

Exam. Lawton: Do you know of any such abuses, Mr. Witness?

The Witness: I can't cite you to abuses of my own knowledge.

By Mr. Ellis:

Q. Taking up the other one about tariff regulation violations, can you state what they were, cite us any more of those, to your own knowledge?

A. No, sir.

Q. Those are just assumptions on your part, are they not?

A. Of course, we have heard of a need for regulation. That is all we were trying to point out there.

Q. You don't think of anything that would be of benefit to this Commission as to actual practices that have occurred, do you?

A. I am not in a position to recommend anything.

Q. How many trucks do you operate that are owned by the Railway Express Agency?

[fol. 2652] A. We cover seven routes. We use one truck on each route.

Q. Seven trucks? Is that right?

A. Yes.

Q. How many do you own; that is, that are owned by the Coast Line?

A. We have one truck.

Q. So your entire fleet of leased and company-owned equipment consists of eight vehicles?

A. That is how many we use. We have one spare.

Q. Do you interchange freight with any common carrier by motor vehicle?

A. Not that I know of.

Q. Nor does your railroad do it?

A. Not that I know of.

Mr. Ellis: That is all.

Exam. Lawton: Anyone else?

Mr. Edward Wheeler: I would like to pass for the moment.

By Mr. Beall:

Q. On these routes that you were operating, by leasing vehicles from the Express Agency, does the Express Agency also hold a certificate from this Commission to conduct its operations over the same routes?

A. I think there is a part of one route that the Express Agency does have a right over, but I am not in a position to tell you just what authorities they do have.

Q. With respect to that one route, or part of the route that they have the authority to conduct operations over [fol. 2653] under their certificate, are the operations you conduct at that point the same as those that you have described here?

A. That is a separate operation. With Express Agency they use their own truck and we use ours. The Express Agency uses one for the account of the Express Company.

Q. Where is that route?

A. In North Carolina.

Q. Between what points?

A. Our route is from Weldon to Williamston, and I think perhaps the Express Agency's route is the same, but I am not in a position to say exactly what their route is.

Q. When did you last check to determine whether there are separate operations on that route?

A. I have not made any recent check. From my own observation, and from general knowledge—I have seen their trucks in that territory.

Q. You have seen them on all their routes, haven't you, because you use their trucks?

A. Yes, their equipment is used on our routes. That is correct.

Q. There is no difference in the equipment used on that route and equipment used on any other route?

A. No.

Q. And you have the same operating equipment on that route where they both have routes?

[fol. 2654] A. We have nothing to do with the handling of express traffic on the route operated by the Express Agency.

Q. Don't they handle your traffic on their vehicles?

A. It is handled by trucks owned by Railway Express Agency and by drivers of Railway Express Agency.

Q. Your freight is handled on trucks owned by the Agency and operated by drivers of the Agency?

A. That is correct.

Q. That is the operation you have described?

A. Yes, sir.

Q. And it is the same thing there?

A. Yes.

Q. Isn't it true that the operations there are covered by the same operating agreement on that route as on the other routes? Aren't you covering that operation with the same contract you are covering your other operations with?

A. Not the trucking contract I referred to, not the contract dealing with express traffic generally.

Q. You have the same contract with the Express Agency for handling your traffic and compensating them the same way?

A. I am not familiar with that contract for handling express traffic.

Q. You don't know, then, how the traffic is handled over those particular routes?

[fol. 2655] A. I grant I don't.

By Mr. Boot:

Q. Have you had an opportunity to examine the proposed rules of the American Trucking Association?

A. No, sir.

Mr. Boot: That is all.

Redirect Examination.

By Mr. Brown:

Q. You were present in the first hearing in this matter here in Washington?

A. Yes.

Q. Do you remember on that occasion Mr. Blanning introduced an exhibit showing what he termed various abuses of the motor carriers?

A. Yes.

Q. Perhaps you are referring to those same abuses Mr. Ellis mentioned when you testified there were abuses you had reference to.

A. That is what I had reference to, the general comment on abuses I heard here and elsewhere.

Mr. Brown: That is all.

Exam. Lawton: If there is nothing further you are excused.

(Witness excused.)

Exam. Lawton: Who else is ready?

Off the record.

(Discussion off the record.)

Exam. Lawton: Are there any other witnesses for the railway companies?

[fol. 2656] Mr. Beall: I am ready with a witness.

J. C. Weaver was sworn and testified as follows:

Direct Examination.

By Mr. Beall:

Q. Will you state your full name?

A. J. C. Weaver.

Q. What is your business address?

A. 612 Bragg Street, Richmond, Va.

Q. With what company are you connected?

A. The Transport Corporation.

Q. What is your position with that company?

A. Traffic manager.

Q. How long have you been with them?

A. Since 1941.

Q. Does that company operate under a certificate from the Interstate Commerce Commission?

A. Yes, sir.

Q. Do you know your docket number?

A. 44128.

Q. And what territory do you operate in?

A. Principally in North Carolina, South Carolina, Virginia, and Maryland.

Q. What is the nature of the business, general commodities, special, or what?

[fol. 2657] A. We have general commodities and then a number of special commodities over irregular routes.

Q. Is there any particular special commodity that you specialize in the handling of?

A. Leaf tobacco.

Q. Leaf tobacco?

A. Yes, sir.

Q. Now, is that an important item in your transportation?

A. It constitutes approximately 82 percent of our traffic.

Q. In the transportation of leaf tobacco, what territory do you serve?

A. North Carolina, South Carolina, Maryland, and Virginia.

Q. And is that by regular or irregular routes?

A. Irregular.

Q. Irregular routes?

A. Non-radial operating rights.

Q. Do you know how much tobacco is produced in the territory which you serve?

A. 1,021,000,000 pounds.

Q. Do you know what the total tobacco crop of the United States is?

A. In 1947, 1,820,000,000 pounds.

Q. How much tobacco did you transport in the year 1947?

A. 454,000,000 pounds, which is approximately 25 per-

cent of the United States and approximately 45 percent of the crop grown in the area which we serve.

[fol. 2658] Q. What is the total annual volume of business done by the Transport Corporation?

A. About one-half million dollars.

Q. I believe you have already stated that loose leaf tobacco represents about 82 percent of the dollar volume of your business?

A. Not dollar volume; tonnage.

Q. Tonnage?

A. Yes.

Q. Is the transportation of loose leaf tobacco year-round operation?

A. It is largely seasonal. Of the 454,000,000 pounds which we handled during 1947, about 300,000,000 pounds was handled during the marketing season, which lasts about 17 weeks, or approximately 85 working days, as no sales are made on Saturdays, Sundays, and holidays.

Q. In what type of vehicle do you transport this loose-leaf tobacco?

A. Flat bed-type vehicles, trailers, some 28 feet long, and others are 32. They are equipped with what we call hogshead rails and demountable sides.

Q. How is this loose leaf tobacco generally shipped?

A. That we move is generally in hogsheads. We do, however, move some in sheets, which is a burlap bundle.

[fol. 2659] Q. On a 28-foot flat bed how many hogsheads do you handle on that?

A. Eighteen.

Q. And on a 32-foot how many?

A. Twenty-one.

Q. Those hogsheads average—

A. They vary, but they will average about 1,050 pounds.

Q. Eighteen hogsheads would be about 18,000 pounds, and 21 hogsheads would be 21,000 roughly?

A. Yes.

Q. What is the season during which this loose leaf tobacco moves? What does the season represent in terms of the calendar?

A. The heavy movement begins in early August and ends around the end of November. Of course, some con-

tinues to move but that is the period during which the heaviest movement is made.

Q. In 1947, for example, how many truckloads were handled?

A. Approximately 25,222 truckloads. That is for the whole year. Of that total 16,667 truckloads, approximately, were moved during the marketing season of 83 working days. This averaged about 200 trucks per day for that period.

Q. During the off-season period you handled tobacco during that period also?

A. Approximately 154,000,000 pounds, which would be around 8,556 truckloads, or, for the remaining days, about 51 trucks a day.

[fol. 2660] Q. During the off season you used about 51 trucks a day?

A. Yes, sir.

Q. How many trucks of the type you have described does your company own?

A. At the present time 51 flat bed trailers.

Q. So your company operates and owns enough equipment to take care of 100 percent of the off-season flow of business?

A. That is right, sir.

Q. When it comes to this marketing season where your heavy movement occurs, how do you handle that volume of business?

A. We augment our equipment by hauling agreements.

Q. How many extra pieces of equipment did you contract for in the year 1947?

A. Approximately 250 complete units.

Q. In addition to the 50 or 51 which you already had?

A. Yes.

Q. From whom did you get this equipment that you contracted for? Who provided it?

A. Principally from produce haulers, farmers, cotton haulers, fertilizer haulers, and lumber haulers, and some from certificated common and contract carriers.

Q. What is the average length of the haul on this loose leaf tobacco?

A. Approximately 100 miles.

Q. What is the maximum haul that you have?

[fol. 2661] A. About 250.

Q. Do you know whether loose leaf tobacco as sold on the market is an exempt commodity under the Motor Carrier Act?

A. Well, some is we are certain, and as to some we are in doubt with respect to the exemption.

Q. What are the circumstances that raise question as to the exemption?

A. Loose leaf tobacco as sold on the market floor we feel is exempt when transported from the market to the redrying plant. The transportation is performed in vehicles not used for the transportation of non-exempt commodities.

Transportation from redrying plants to buyers or warehouses may not be exempt because redrying might constitute processing.

Q. You handle both types of tobacco?

A. Yes.

Q. When these contract vehicles are in service, what, if anything, would they be called upon to haul which might not be an exempt commodity?

A. Hogshead material, burlap sheets, and occasionally baskets and redried tobacco, if that is a non-exempt commodity which we are uncertain about.

Q. Tell us, so the record may be clear, what you mean by "sheets"?

A. Merely a piece of burlap cloth, usually about six feet square.

[fol. 2662] Q. That is the cloth that the loose leaf tobacco that is sold at the warehouse is put on and the corners brought together?

A. It is generally sold on the warehouse floor in baskets, and they dump the basket on this sheet and tie it up like you would a bundle of laundry.

Q. With respect to a single trip, would exempt and non-exempt commodities be mixed on a single trip?

A. No, sir.

Q. They would not?

A. No, sir.

Q. Where are the principal tobacco markets which you

serve? Take South Carolina, for example. How many of them are there and where are they?

A. There are nine in South Carolina.

Q. How many in North Carolina?

A. Forty-four.

Q. How about Virginia?

A. Sixteen.

Q. Maryland?

A. Five.

Q. North Carolina and South Carolina are pretty well scattered over the State, were they?

A. In the producing area, which in South Carolina centers around Florence, such points as Timmonsville, Lake City, Mullins, and Pamplico.

[fol. 2663] In North Carolina, east of U. S. 29, the principal markets being Lumberton, Wilson, Greenville, Tarboro, Rocky Mount, Fuquay Springs, and Durham, and various other places.

Q. When the tobacco is sold at these markets, where is it transported to? What are your principal destination points?

A. Our principal destination points are Richmond, Va., Durham, Reidsville, Winston-Salem, Wilson, N. C., Danville, Va., South Boston, Va., Kernersville, and Greensboro, N. C. Those are the principal destinations.

Q. Mr. Weaver, in order that the record may portray the movement of this tobacco, will you describe its movement from the time the sale is effected on the warehouse floor until it reaches its final destination at the final storage place?

A. Tobacco sold on a loose leaf market is only partially cured and is green tobacco and highly perishable in that state. The first movement is generally from the market floor to a prize house, which is the place where they place the tobacco in hogsheads and compress it as much as possible to get as much tobacco as possible in a hogshead.

Q. Does your company perform that operation?

A. No, the buyer generally has his own small pick-up trucks for that purpose.

Q. So your operations begin at the prize place?

A. The second movement is the prize house to the re-

drying plant. Sometimes the redrying plant is in the same city, but most times it is at some other place.

[fol. 2664] Q. May it be at the point of the warehouse of the buyer?

A. It frequently is.

Q. In other words, the redrying plant may involve a haul of 100 or 200 miles?

A. That is true.

Q. Go ahead.

A. The third movement is from the redrying plant to storage. That may be temporary storage or permanent storage.

During the season the tobacco people have to find storage wherever they can. Sometimes they may have tobacco moved as much as four times.

Q. What necessity is there for fast handling of tobacco during the season?

A. Well, in the first place, until tobacco is dried it is highly perishable. The moisture will cause it to mold and once it molds just a small spot in it will damage a lot of tobacco surrounding it. After it is redried it is less susceptible to that but it has to be gotten out of the way so more can be moved in.

Q. It has to be gotten away from what?

A. The incoming tobacco to be sold. The redrying plant seldom has any storage facilities so as soon as they can redry it and assembly it, in truckloads, they have to load it out and make room for incoming tobacco.

[fol. 2665] Q. Is that lack of storage facilities characteristic of the prize plants as well as the redrying plants?

A. Yes. They are not designed for storage purposes, just for necessary work to be done to move it on to its permanent storage. During the market season it is necessary to clear the floor every day for the following sales.

Q. In other words, the floor of the warehouse where the sales take place has to be cleared——

A. The floor of the warehouse, the floor of the prize house, and the floor of the redrying plant. It has to be a continuous operation, in other words.

Q. When you contract for extra equipment to handle this peak seasonal operation of tobacco, you arrange with

the owners or providers of that transportation for their services?

A. On a percentage of revenue basis per trip. The contracts are for service on a seasonal basis, or as such services may be required.

Q. Is there any reason why you contract with them on a percentage of revenue basis—any particular reason for that?

A. Yes. Prior to the war we paid them on a per-hogshead basis. During the war we could hardly obtain trucks at any price, so our competitors began to pay them on a percentage of revenue basis, and we had to follow suit for competitive reasons. In May, 1946, we attempted to go back to the hogshead basis and mailed out new contracts with a schedule of charges attached, and the operators got [fol. 2666] together and served notice on us that they would not transport it on anything but a percentage basis, and we had to adopt that.

Q. What is the situation with respect to a mileage basis? Would that be a practical basis of securing this service, or what is the situation?

A. No, we have not been able to obtain operators to do it on that basis. We have a number of short hauls—one as short as 11 miles. Of course, a truck operating in that service could make several roundtrips, but he wastes a great deal of time loading and unloading, and waiting to be loaded and unloaded, so in the course of the day he would run 60 or 70 miles, whereas another fellow will have a trip of 200 miles, or longer, with only one stop for loading and unloading.

We couldn't get operators to serve the short-haul points because the revenue wouldn't justify it.

Q. When you engage this extra equipment, what does your company do, if anything, to see that the Commission's safety regulations are complied with?

A. We require drivers' medical certificates, drivers' logs, and inspect their vehicles and provide identification markers therefor in accordance with the Commission's regulations.

Q. What organization, if any, do you have during the

market season so that you can police, examine, check, or supervise this heavy movement of tobacco?

[fol. 2667] A. During the marketing season we open up temporary offices in the field within a radius of maybe 50 miles of practically every market. We have ten such supervisors in the field during the season. Of course, they are equipped to inspect, dispatch, and keep everything in order.

Q. Do you carry insurance that covers the operations of this contract equipment?

A. Yes, sir.

Q. What insurance do you carry?

A. Public liability and property damage is $50,000 one person and $500,000 for one accident. Cargo insurance is $52,500 for vans which are not involved here, and $25,000 for flat bed equipment.

Q. What has been your experience in securing insurance to cover these contract operations, contract vehicles?

A. Our public liability insurance is carried by one of the largest concerns in the business, I guess, United States Fidelity and Guaranty Company. They have carried our insurance for 17 years, and we have a rating with them about 45 percent below manual. That is 55 percent of manual on public liability, 30 percent of manual on property damage, and 45.7 percent of manual on workmen's compensation.

Q. In the handling of loose leaf tobacco, do you have competitors?

A. Yes, outside of the certificated carriers we are also in [fol. 2668] competition with exempt carriers who are not subject to rate control, and, as I understand, are not included in this investigation.

Q. Do you have any applications pending before the Commission for additional territory or territory additional to that which you have described here?

A. Yes, we have an application pending covering the States of Kentucky, Tennessee, Georgia, and Florida, and also from Maryland to Pennsylvania.

Q. For tobacco?

A. For tobacco.

Q. How much tobacco is raised in the new States for which you have filed?

A. 547,000,000 pounds.

Q. Has your company ever been charged with violating any of the Commission's safety regulations?

A. No, sir.

Q. What difference, if any, is there between the safety record of your own company-owned and controlled equipment as compared with the contract equipment which you use during this peak season?

A. We find the contract operators used by us are particularly carefully—equally as careful as our own drivers. They own their equipment and must pay for all damages done to their equipment.

[fol. 2669] Q. Do you use any of the so-called gypsy operators; in other words, a fellow that shows up somewhere and you employ him just to make one trip for you?

A. No, sir.

Q. You don't have any of that?

A. No.

Q. These people who haul for you, haul for you during the season?

A. On a seasonal basis.

Q. You have described a 17-week, approximately, market season. Will you tell us whether that 17-week market season has 17 weeks at one point, or is it a 17-week period with the location of the markets shifting during that period according to States?

A. It shifts from South Carolina to Virginia during that period.

Q. You begin in South Carolina?

A. Yes. Of course, the tobacco matures down there earlier than it does in Virginia. The markets open in South Carolina in early August. They will be open about two weeks and then another group of markets will open, and before they close a third group will open and frequently we have four market areas open at one time overlapping each other.

We start hauling tobacco from South Carolina maybe when the markets in Wilson, N. C., open up.

Q. So there will be an overlapping, to some extent?

A. Yes, sir.

[fol. 2670] Q. Of these 250 units which you operated by

contract arrangement in 1947 what happens to them as the market shifts from South Carolina northward to Virginia? Do all of those people follow you and your operations as the market goes northwardly, or do some of them drop out and new ones come in, or what is the situation there?

A. Some will follow us from South Carolina into North Carolina, but we never have any of them follow us from South Carolina to Virginia. Likewise, those in the southern section of North Carolina won't come up into Virginia, so that it is necessary as we move northward to contract with other carriers to take care of those who fall out as we move north.

Q. In other words, is it true that these operators, generally speaking, won't go too far from their homes?

A. That is true. They are probably by that time of the year ready to haul something that they haul through the winter, something of their own, or go back to the farm, or whatever it may be.

Q. Mr. Weaver, what is the approximate cost of a tractor such as is generally used in these operations that you have described?

A. A tractor is approximately $4,500.

Q. What do flat bed trailers cost?

A. Approximately $2,500.

Q. That would make your cost new about $7,000 per unit?

[fol. 2671] A. That is right.

Q. If you were to replace the 250 contract units which you use during this 17 week seasonal period with all new equipment at $7,000 per unit, what would the investment come to?

A. About $1,750,000.

Q. Assuming you had money enough to buy that equipment and keep it standing around after the season was over, could you find drivers for it for a short period of time?

A. No, sir. It would be practically impossible to find competent drivers for 17 weeks' employment.

Q. Considering the type of seasonal operation which your company performs in connection with loose leaf tobacco, what suggestions, if any, do you have to make to

the Commission with respect to the issues involved in this proceeding?

A. Tobacco is only one of numerous seasonal movements of agricultural commodities. There must be some flexibility of transportation facilities to handle these movements. The movement may be either by exempt carriers or regulated carriers. Any regulation that would interfere with the flexibility of equipment to meet such seasonal demands would be destructive of the agricultural economy, in our opinion.

No purpose would be served by handicapping regulated carriers by rules and regulations which would not be applicable to exempt carriers of the same commodities. The present regulations requiring medical certificates, drivers' logs, inspection of vehicles, vehicle markers, and insurance, [fol. 2672] are all that is necessary to protect the public and no regular regulations are needed on seasonal commodities.

Restrictions on ways and means of augmenting fleets of regulated carriers during the marketing season would simply put the certificated carriers out of business and drive this transportation business into the hands of unregulated carriers over which the Commission has no jurisdiction.

Q. Does that complete what you want to say in this cause?

A. Yes.

I would like to emphasize the fact that this is a very real threat to our business. We have run into that kind of competition already and it will certainly spread if we are going to be saddled with regulations we can't live under.

Q. As far as you know, how does your operation compare in size with the other operations in the movement of this tobacco crop?

Are you a big operator or a little one?

A. You mean with other operators handling the same commodity?

Q. Yes.

A. I am of the opinion we are the largest hauler of this commodity.

Q. The largest in the United States?

A. Yes, sir.

Mr. Beall: That is all.

Cross-Examination.

[fol. 2673] By Mr. Ellis:

Q. These people who haul for you in South Carolina, for example, how long does that last before you move up north?

A. That ends in early August and probably lasts through September.

Q. Thirty days, or so?

A. Not more than sixty, anyway.

Q. Any operation that would require you to employ them on a long-term basis, 180 days, or so, would be burdensome to you, would it not?

A. We couldn't use them.

By Mr. Edward Wheeler:

Q. Do you purchase your trucks at a discount from the list price?

Mr. Beall: I object to that. I can't relate it to any issues involved in this case.

The Witness: I would like to answer it, if you don't mind.

Mr. Beall: Go ahead.

The Witness: Those days are long past when you could get a truck at a discount.

By Mr. Edward Wheeler:

Q. The man who buys one truck pays the same price you pay when you buy them in quantities?

A. As far as I know.

Q. Was that true before the war?

A. No, sir; we got fleet discounts before the war.

Q. What is the situation with respect to tires?

[fol. 2674] A. I couldn't answer that; I don't do the purchasing.

Q. Gasoline?

A. Well, all operators who use any quantity of gasoline get tank wagon prices which is somewhat below the retail price.

Q. Because you are a fleet operator, aren't you able to maintain and service your trucks at a lower cost than an individual operator?

A. Well, it depends on the individual operator. A lot of those fellows are mechanics and keep their own trucks up. They can do their own repairs whereas we have to maintain expensive shops with all the attendant expenses.

Q. Do these individual operators show the time spent in maintenance of their equipment on their log books as operating time?

A. No, sir; they are not on duty for us when they do that.

Q. When they are working on their trucks and maintaining them they, of course, cannot be running them over the road, can they?

A. They don't put the hours they sleep on there, either.

Q. That is on their log sheets?

A. On their logs.

Q. For what period of time do you lease this equipment from these owner-operators?

A. We have a continuing agreement; that is, subject to 30-day cancellation on the part of either party. If it is not [fol. 2675] canceled it continues from year to year.

Q. So that you are free to call upon that truck at any time during the year that you want it?

A. That is right.

Q. What is the average time that you use the truck of an individual operator with whom you have such a lease arrangement?

A. I don't know that I could give you an answer to that. The South Carolina trucks are probably used for a period of six or seven weeks; the North Carolina trucks might be used for a period of ten weeks, and so on.

Q. Do you know what proportion of the total income, taking an average, that these owner-operators receive

from you, that is, of their annual income what percentage would they receive from you?

A. I don't know.

Mr. Lordan: That seems to be beyond the issues here. I know Mr. Beall is capable of protecting the witness, but I have to listen, too.

Exam. Lawton: He said he didn't know.

By Mr. Edward Wheeler:

Q. Is the owner-operator your employee or not?

A. He is not.

Q. You stated that you have been forced to use a percentage of revenue as the method of compensating these owner-operators. You indicated that they would not accept any other basis. Is that correct?

[fol. 2676] A. That is correct.

Q. Does the percentage of revenue compensation yield a higher return or higher amount of money to them than another method of compensation might?

A. We might give it all to them. I couldn't answer that question.

Q. What is the owner-operator interested in? Is he interested in the amount of return or amount of money he receives from you for the use of his equipment and his time, or is he interested in the method of compensation, the method by which it is returnable?

A. Of course he is interested in both.

Q. Why is he interested in the method by which you determine the compensation as distinct from the amount which you are paying?

A. They insist on the percentage of revenue basis. You asked which he preferred or which he was interested in.

Q. You stated that on direct and I am trying to get behind that now.

Mr. Edward Wheeler: Will you read the last question, please.

(Question read.)

Mr. Beall: If you know.

The Witness: I wouldn't know why. I know he is.

[fol. 2677] Mr. Edward Wheeler: I object to prompting of that kind. This man has stated he conducts the negotiations. Presumably he knows why the owner-operators want to be paid on a percentage of revenue rather than a hogshead basis.

I move to strike the testimony unless the witness can testify further as to it.

Exam. Lawton: Isn't it reasonable to assume he wants it that way because he gets more money?

By Mr. Edward Wheeler:

Q. Isn't he interested in the amount he gets rather than the method?

A. He set the method himself. He knew what it would amount to. He knows what the rate is between points and it is an easy method of arriving at it.

Q. If you set the price on a hogshead basis high enough there is no reason to believe he would not prefer that to a percentage of revenue if the hogshead price basis was greater?

A. I will tell you another reason that just occurred to me.

Q. Will you answer my question first and then explain it?

A. I thought that was a part of the question.

Exam. Lawton: Will you read the question?

(Question read.)

The Witness: We attempted to do that, sir, and they rejected that in favor of the other.

By Mr. Edward Wheeler:

Q. And the price fixed on the hogshead basis, that is the income to be received by the owner-operator, was [fol. 2678] greater than it is on a percentage of revenue?

A. I wouldn't say greater. As I started to say a while ago, one reason is that tobacco is variable in its weight per hogshead.

Is that an answer to your question?

Q. It may be.

A. The Maryland tobacco, for instance, is a very light tobacco, more like oak leaves in texture and weight char-

acteristics. About 900 pounds is all you can get gross, and that includes 100 pounds for the hogshead. So when you are hauling 21 hogsheads of that you have approximately 19,000 pounds.

Other tobacco will weigh up to a thousand or 1,050 pounds, and when you get into a darker fired tobacco that will run anywhere from 1,100 to 1,400 pounds per hogshead. It depends on the type of tobacco that goes into the hogshead, the person or firm who packs it, and how careful they are with cooperage, whether they damage it by too much pressure or not. You could not arrive at the same basis per hogshead as you could on a percentage of revenue.

Exam. Lawton: The revenue basis would yield the owner-operator a greater amount of money for the use of his truck?

The Witness: It depends upon the price per hogshead. He cannot get but so many on his truck regardless of weight. If he got all 1,400-pound hogsheads, and his price was high enough to meet the basis of 900-pound hogsheads, that would take all your revenue.

[fol. 2679] If you set it on a 1,400-pound basis, on a 900-pound hogshead he would get more than he should. You would have to set some standard hogshead to do that, and there isn't any such animal.

Mr. Edward Wheeler: I think we have pursued that far enough but I have a couple of other questions.

By Mr. Edward Wheeler:

Q. Do you reject any owner-operator equipment for non-compliance with I.C.C. regulations?

A. We see that they comply with the regulations if we use them.

Q. Do you reject any for non-compliance?

A. I don't do that part myself.

Q. What do you know about whether or not the equipment used by your company does comply with the I.C.C. regulations?

A. We have a shop with master mechanics, and so forth, and it is at Durham, N. C., and trucks go there for inspection and leases are negotiated there.

All during the season they are in and out of there several times a week, and it is their duty to inspect them and see if they are in running shape.

Q. Now, can you answer my question? Do you know whether any of those trucks tendered to you by owner-operators are rejected for non-compliance?

A. If we find them in non-compliance we see that they are before we use them.

Q. Do you fix them in your shops?

[fol. 2680] A. Not necessarily. They usually have their repair shops that they go to.

Q. Do you lease from pretty much the same people year after year?

A. We have been using some of them 14 or 15 years.

Q. Do you know whether or not the log books of these operators are checked before you employ them?

A. They are required to submit their logs along with the receipts they get for the loads to our office, and they are checked.

Q. What do you mean by "checked"? You mean they are looked over to see what is reported there?

A. Yes, sir.

Q. Do you have any way of checking or determining whether or not they have been falsified?

A. No, sir.

Q. You can check your own operators to determine whether or not they have falsified their logs?

A. Not that I know of.

Q. They are working for you all the time. You know what duties they have previously performed during the week.

A. Yes, we know what they are doing, of course.

Q. I am speaking now of your own employees?

A. Yes.

Q. Do you exercise pretty complete control over your own employees, or not?

[fol. 2681] A. Yes, sir.

Q. Do you exercise the same amount of control over your owner-operators?

A. No, sir; I wouldn't say we do that.

Q. Do you provide return loads for your owner-operators when you issue them a billing on a trip?

A. We provide return loads when it is possible to do so; yes, sir.

Q. When you don't have a return load what happens?

A. He may be released at that point to haul something for himself, or he may be sent back to another market to reload with tobacco. Usually that is the case.

Q. He is sent back?

A. For another load.

Q. Do you pay him for that return trip?

A. No, sir.

Q. Why do you own any trucks at all?

A. Why?

Q. Yes.

A. We endeavor to own enough trucks to handle our normal business.

Q. Why do you maintain that policy?

A. Because we are in the transportation business and like to own all we need, but it is impossible to do it.

Q. I again ask you why you feel that you should own all you need for your company?

[fol. 2682] A. Well, we feel like we can make more money out of them owning them if we have full time employment for them; yes, sir.

Q. Do you know what the policy of the competitors of yours is in that same field? I mean with respect to the ownership of equipment?

A. So far as I know, it is the same thing. None of the carriers own enough equipment, or, I should say, they are not justified in trying to own enough equipment to handle that seasonal business which occurs at the same time for all of us.

Q. Have you made an effort to secure equipment from other authorized carriers other than those engaged in tobacco hauling during your peak load period?

A. We do have contract arrangements with some certificated carriers, some of whom have leaf tobacco rights, probably not as broad as ours, and it doesn't cover the same destinations, and others may not have tobacco rights at all but the majority do have tobacco rights. They have to have equipment suitable to handle this particular traffic.

Q. I thought you said you hired most of your owner-operators' equipment from people who were hauling miscellaneous agricultural commodities and lumber, and so forth?

A. I did say we got the majority from them, but I also said we got some equipment from certificated carriers.

Q. What about this equipment you get from other miscellaneous agricultural haulers? Is that purchased by [fol. 2683] them for your specific use?

A. Oh, no.

Q. Then, how is it specialized equipment?

A. They use the same equipment for hauling cotton, fertilizer, producer, Irish potatoes, and lumber. They can convert the same truck for the use of hogsheads simply by bolting a four by four wooden rail down the side. That is all it needs to turn a flatbed truck into a specialized truck for the hogshead.

Q. Then the specialized character of the equipment is limited by the fact that you have to have the flatbed, No. 1; and, No. 2, that you have to have the sides?

A. It requires demountable sides.

Q. Then, have you ever made a survey of the equipment of other common carriers in the eastern seaboard area to determine whether or not they have equipment which you could lease during your peak period?

A. I have not made any specific survey, but from my general knowledge of the situation I don't think there are that many trucks available because those who have tobacco rights would be using them to a certain extent in hauling for themselves at the same time.

Exam. Lawton: Can the general commodity carriers transport tobacco?

The Witness: If they have flatbed equipment; yes, sir. [fol. 2684] Hogsheads don't led well into a van.

Exam. Lawton: But so far as their operating rights are concerned, there is nothing that would prevent them?

The Witness: That is right, sir.

By Mr. Edward Wheeler:

Q. Do most of the tobacco haulers operate at about the same time you do? I mean, do they move northward with the season?

A. Yes, sir.

Q. How is the percentage—looking at it percentagewise—how does the percentage of owner equipment versus leased equipment compare today with, nine years ago?

A. In our particular company?

Q. Yes.

A. I can't give it to you percentagewise. I do know this: That in 1947 we added 11 flatbed trucks to our fleet, and in 1948 five. Some of those were replacements, but most of them were additional.

Another thing that has been going on in our company is that we are not putting any more 28-foot trucks into the fleet. That limits us to 18 hogsheads. All the newer ones are 21's, which gives us more capacity per truck, and to that extent cuts down the necessity for leasing.

We do have one truck 37 feet long, which will haul 24 hogsheads, which is more or less experimental. I don't think it will prove practical.

[fol. 2685] Q. Before the war, did you have more or less company-owned vehicles?

A. We have increased it every year.

Q. That is the company-owned?

A. Yes.

Q. And there has been a corresponding decrease in the amount of leased vehicles?

A. No, sir; I don't think that is true. The crop has kept increasing.

Q. So that percentagewise you would say it has remained about the same?

A. Percentagewise we are no better off than we were. The Government, as you probably know, curtailed the acreage in some sections about 27 percent. What that did was to cause them to put more fertilizer on the ground and they put their hills closer together so the crop was practically the same.

By Mr. Todd:

Q. Do you handle any of this tobacco that moves into Richmond, Va.?

A. Yes, sir.

Q. Does it move from points outside of the State of Virginia? What would be a typical movement? I want to ask a specific question, but I want a typical movement, first.

A. We have a year-round movement of 25 or 30 truckloads every working day from Durham, N. C., to Richmond.

Q. On that operation between Durham and Richmond, do you use, during this peak period, any of these so-called [fol. 2686] owner-operators?

A. Yes.

Q. And they are moving redried tobacco from Durham to Richmond to warehouses; is that correct?

A. To the factories mostly.

Q. When they get to Richmond with their load, and discharge that load, do you at that point turn them loose and disregard any responsibility for their getting back down to Durham, or do you provide insurance coverage for their return movement?

A. Our insurance covers all leased vehicles operating for us. Whether that truck is in our service when it goes back empty or not I can't answer.

Exam. Lawton: But it is still covered by your insurance; is that right?

The Witness: I couldn't answer that, either. That would be one for the courts, I suppose.

Mr. Beall: It is a matter of interpretation of the Commission's insurance rules, I suppose.

By Mr. Todd:

Q. With respect to the operators during the peak period, they are in your service; is there anything in your agreement that obligates them to continue working for your company, or could they discontinue working for you and go to work for some other tobacco hauler?

A. They could do that on sufficient notice.

[fol. 2687] Q. They would have to give you 30 days' notice?

A. They could haul anything that came under their own rights in the meantime insofar as our contract is concerned,

but if they were going to a competitor that would be different.

Q. And if during that period they had need either as a private or for-hire carrier for their vehicle, they are obligated to furnish it to you; is that right?

A. I don't know if I understand the question.

Exam. Lawton: Will you read the question?

(Question read.)

The Witness: I don't believe I got it.

Mr. Todd: I don't believe that is my question.

By Mr. Todd:

Q. My question is this: If they have need for their vehicle during this peak period when it is supposed to be in your service, either as a for-hire carrier or private carrier, are they obligated to furnish it to you or can they use it for their own service?

A. If we need it?

Q. Their primary obligation during this period is to you; is that right?

A. That is right.

Mr. Todd: That is all.

By Mr. Pou:

Q. I believe you stated that during the peak period it was ordinarily necessary for your company to contract for about 250 units.

[fol. 2688] A. Yes.

Q. You don't mean you require 250 units continuously during the period of 17 weeks?

A. During that period we move approximately 200 truckloads a day. In moving the tobacco they get tied up in loading and unloading and can't make a trip on schedule. We have to have some flexibility there.

Q. I believe you stated some of the trucks you leased from South Carolina owner-operators in the beginning of the season serve you until the movement got into North Carolina, and then they are no longer interested and you have to lease from others.

A. That is true.

Q. And the same might be true when you get into Virginia and move into Maryland?

A. Yes, sir.

Q. Two hundred and fifty, then, is the total you might engage for the 17-week period; is that right?

A. Approximately right.

Q. Could you give us some idea about the total number you would require from the beginning to the end of that period if you retained and used the same trucks during that whole period? Would it be 100 or 150, or something like that?

A. Our average for the 17-week period was 200 truckloads per day.

[fol. 2689] Q. Does that include your own 50 trucks?

A. Yes. We would have to have approximately 250 to give us a little flexibility during that period.

Q. You mean 250, including your own 50?

A. Yes. We would have to have 250, approximately, available to us.

Q. Then in order to serve this need it would not be necessary for you to buy 250 tractor-trailer units, would it? If you brought as many as 200 that would serve your needs?

A. Yes; then we would have 251.

Q. You didn't mean you would have to buy 250 additional units?

A. If we couldn't lease any, sir, it might be necessary to buy more than 200 to give us some flexibility.

Q. You spoke of the efforts to comply with the Commission's safety regulations with respect to the drivers of these leased vehicles, or the vehicles for which you contract, as you spoke of them, and you mentioned you required medical certificates and the keeping of drivers' logs, and that you required vehicle inspections. You did not mention—perhaps you would have, had you been asked—the matter of reporting the excess hours of those drivers. Do you know if your company submits excess hours reports to the Commission each month?

A. Yes, sir; it does.

Q. It being a class I carrier it is required to do so, is it not?

A. Yes, sir.

[fol. 2690] Q. Are you familiar with the preparation and submission of those reports?

A. No, sir; except I know it is done. Our main office is in Blackstone and I am in Richmond.

Q. Can you tell me if excess hours made by the owner-operators on these trucks you contract for are included in the excess hours report submitted to the Commission?

A. As far as I know, they are included.

Q. You don't have any reason to report them in a different manner, nor to fail to report them, than the other drivers?

A. Not that I know of.

Q. You did state, I believe, that when a driver of his own equipment found it necessary to make repairs to that equipment you did not count that time as on-duty time; is that right?

A. That is right.

Q. Because he is not on duty with your company you don't consider him as on duty?

A. No.

Q. Then in a case where a driver is on duty for you as much as 60 hours during a seven-day period, and if he was on duty because of traveling on the highway, repairs, and so on, for an additional 10 days, that would make a total duty as far as the driver was concerned of 70 hours during the week, wouldn't it?

A. That is correct.

Q. But you think that would not happen often?

[fol. 2691] A. The type of repairs I was thinking of was those discovered and done off the highway after he makes his trip.

Q. Suppose he has a breakdown on the trip.

A. That is an emergency.

Q. What do you do with the time the owner-driver spends making repairs?

A. I don't know, sir.

Q. I thought you had a rule of not including it.

A. What I had in mind in answering that question about doing repairs was the maintenance jobs—if a man discovers something wrong with his truck while driving along

the road, maybe he makes his delivery and then goes ahead and does his own maintenance work.

Q. You have no record of his own maintenance work done at the end of the trip?

A. No, not that I know of.

Q. Along that same line when a driver performs transportation he is engaged to perform for your company in going from Durham to Richmond, but hauls for someone else on the return trip, and hauls for you then on another trip from Durham to Richmond, do you get any report on the driving time he puts in on the return trip from Durham to Richmond for the other person?

A. I don't know, sir.

Q. So you don't know if that would be included in your time records, or not?

[fol. 2692] A. I do not, sir.

Mr. Pou: That is all.

By Mr. Lieberman:

Q. Mr. Weaver, do you think you could impose a rule or procedure on the owner-drivers which you employ requiring that they maintain throughout each week in which they are in your service, either one day or more, logs for every day they are on duty either for your company or for themselves, or for any other carrier?

A. You mean to furnish us logs for the time they are working for someone else along with the time they are working for us?

Q. My question is this: Do you believe you could issue a rule and require the owner-drivers whom you employ to produce for your inspection a log book showing their hours of service for the days during any given week?

Mr. Edward Wheeler: I object to the question. I think he is asking the witness for a legal conclusion or opinion.

Exam. Lawton: If that was a requirement of the Commission you would have to do it, wouldn't you?

Mr. Lieberman: I was inquiring whether he believes as a matter of actual practice that rule from a company standpoint could be——

Exam. Lawton: Practical.

By Mr. Lieberman:

Q. I am interested in finding out if his company required all owner-drivers to show logs for days preceding his company's employment, whether he could get them from the [fol. 2693] drivers. Do you follow the question?

A. I think it would be practically impossible to do that in our operation because a good many of the trucks are dispatched by telephone, and if you run 50 miles or so just to show someone a copy of a log every day for every trip.

Q. Is there any reason the owner-drivers could not maintain the logs and keep them and show them to you at some specific time during their employment with you?

A. There is no reason they could not, and I think they are more or less keeping the complete logs now. Presumably that is the time they are spending in our service. I cannot answer that definitely.

Q. Are you familiar with the kinds of public liability and property damage insurance policies that cover your own fleet, your operation?

A. I am familiar with some of the terms. What particular feature do you have in mind?

Q. Do you know if that policy is known as a gross receipts policy, or is it a policy that covers named vehicles?

A. It is a gross receipts policy.

Q. I wish you would explain briefly what is meant by a gross receipts policy.

A. As I understand it, the premium is based on a certain percentage of the gross receipts taken in by the company.

Q. The premium which your company pays for such insurance coverage is determined by the volume of busi- [fol. 2694] ness done by your company?

A. Yes.

Q. Is it also true, sir, that such a policy provides that any motor vehicle employed by your company in its service is covered for public liability and property damage?

A. It does provide that.

Q. Therefore, under those circumstances, any vehicle used by your company, whether it be a company-owned

vehicle, or whether it be a vehicle contracted for by you with a owner-driver, would be covered?

A. To the same extent our own vehicles are.

Q. Is the cargo policy which your company maintains a gross receipts cargo policy?

A. Yes, that is on the same basis.

Q. Is the principle of payment and coverage the same as outlined by you for public liability and property damage?

A. It is.

Q. Therefore it would cover the details of your own company's or hired or leased vehicles?

A. Yes.

Mr. Edward Wheeler: I would like to ask one question to clarify an answer the witness gave me. Apparently I misunderstood him.

By Mr. Edward Wheeler:

Q. I thought you said all the owner-operators were dis-[fol. 2695] patched from a particular place in a particular town. Was I incorrect in that?

A. We have about ten offices scattered throughout the market area from which the trucks are dispatched, but that may be done by telephone to a man who is 25 miles away.

Q. And when that truck is dispatched that may be a truck that you have under lease and that you have not used so far?

A. That may be true, but when the season opens the truck is generally inspected before they start using it.

Q. Do you know that every truck is inspected before it is dispatched by telephone from one of these places, or don't you?

A. The initial movement would not necessarily be done by telephone, sir. I am speaking of the daily routine. For instance, we have a dispatching office at Lumberton, N. C. We have markets scattered around that section within a 10, 15, 25, or maybe 50-mile radius from which the Lumberton office dispatches trucks for these various markets and the truck he wants to use—the man may live in Whiteville, and when he comes back from his other load he will

go home and call in to our dispatcher tomorrow morning to find out where he wants him to go.

The truck does not go to Lumberton if he has a load for him somewhere else in another direction. That does not necessarily mean that is the first trip he has made.

Q. How often do you require every owner-operator to take his equipment in for inspection?

[fol. 2696] A. I couldn't answer that.

Q. Do you have a periodic inspection of equipment?

A. I couldn't say that.

Q. Have you read the leases between your company and the owner-operators?

A. Yes, sir.

Q. Does the same thing apply to an inspection of logs? When you telephone a man and dispatch him by phone that may happen at any time, may it not?

A. There is no requirement I know of that you have to inspect his log when you dispatch him.

Q. I was not asking that. I was asking when you did inspect his log if you dispatch him by telephone?

A. I say again that I don't know that you have to inspect his logs before you dispatch him.

Q. When do you inspect his logs?

A. The logs are sent in along with the receipts when they are turned in for settlement.

Q. What about his medical certificate?

A. That is on file when the driver changes or when we lease the truck.

Q. That is providing he goes into your center before he is dispatched for the initial movement during that particular season?

A. Yes, sir.

Exam. Lawton: Is there anything else?

[fol. 2697] Mr. Lordan: Just one question, Mr. Examiner. I have not previously cross-examined this witness.

By Mr. Lordan:

Q. Mr. Witness, I believe you testified that you enjoy a favorable insurance premium because of your experience. I believe you have also testified your company has never been prosecuted for violation of the safety regulations of

the I.C.C. I would like to now ask you whether or not your rate level of your company is on the same general level comparable to other carriers who operate in the same general territory?

A. Of like commodities?

Q. Yes.

A. Yes, sir.

Q. It is not lower, generally speaking. Is that right?

A. No. This tariff is a joint agency tariff published for all the tobacco haulers that I know of.

Q. And you testified that practically all of them engage in the same type of leasing that you do?

A. Yes.

Q. So you know of no breakdown in the rate structure due to leasing in your area?

A. Oh, no, it is to take care of the shipper's business.

By Mr. Brown:

Q. When these trucks of the owner-operators move in your business are they labeled in any way so someone else would know they are being operated by you?

A. Yes. They each have a placard on either side of the power unit.

[fols. 2698-2701] Q. When the owner-operator carries a shipment from Durham to Richmond, and you send him to South Boston to pick up another load, is he paid for that movement from Richmond to South Boston empty?

A. We feel the percentage he gets of the gross revenue would pay him to make that trip. He is not paid as a separate movement.

Exam. Lawton: We will recess at this time until 9:30 a. m. tomorrow morning.

(Whereupon, at 4:40 p. m., the hearing was adjourned until Tuesday, December 14, 1948, at 9:30 a. m.)

[fol. 2702] PROCEEDINGS—December 14, 1948

Exam. Lawton: Come to order, please. We will resume the hearing.

Mr. Markowitz will take the stand.

ALEXANDER MARKOWITZ was sworn and testified as follows:

Direct Examination.

The Witness: My name is Alexander Markowitz. I am general traffic manager of the New York & New Brunswick Auto Express Company, Inc., common carrier by motor vehicle subject to the jurisdiction of this Commission, operating under a certificate of public convenience and necessity with headquarters at New Brunswick, N. J. We are respondent to the investigation in this proceeding.

The company I am employed by operates a total of 150 vehicles in which it holds full ownership. It is engaged in addition thereto in an extensive interchange of trailer equipment with other authorized motor carriers. It makes some interchange of tractor equipment with such carriers for operating convenience. It does some leasing of owner-operator vehicles in peak periods and it does some leasing of owner-operator vehicles on light traffic routes where unbalanced operation is a factor.

I have held the position of general traffic manager of the New York & New Brunswick Auto Express since February, 1936, and my own knowledge of the problems arising from leasing and interchange arrangements goes back to 1938, [fol. 2703] and has been continuous since that date.

I presented the facts from the files and experience to the committee appointed by the American Trucking Association to deal with the leasing investigation, and presented myself at their New York City session and gave the chairman a complete file of all of my correspondence and all of my observations on the leasing problems involved in this investigation for the use of that committee.

The rules which I proposed to the Commission for inclusion in this record differ from those rules which the A.T.A. Leasing Committee submitted as its majority re-

port, only to the extent of providing for further administration and enforcement procedure.

My purpose in asking the Commission to prescribe some rules, which I will introduce here is that proper administration and enforcement are to me the most important factor in the proposal of any rule which this Commission may be asked to write. I am convinced that the industry cannot and will not police itself, that the abuses are widespread and cannot be curbed by any action the industry takes by itself, without the authority and backing of the Commission.

I believe, and my testimony will serve to prove, that proper leasing and interchange of motor vehicles between authorized carriers of the same type should be encouraged and distinguished from that type of leasing operation [fol. 2704] which I consider to be bad and which is generally known as "gypsying," and I draw a complete distinction between what I call leasing and interchange, and so-called gypsying, which to my mind are different things.

I don't want to put an end to any practices which would encourage proper leasing and interchange, and I would like to see restrictions placed on practices which encourage gypsying.

Furthermore, I call attention to the difference between so-called short-term or trip-leases which I consider to be the main problem, as opposed to so-called long-term leases, which are more likely to be contrary to law and to the advantage of both parties.

I distributed last evening for identification in this record two exhibits which I would like to have identified for the record at this time. There are additional copies available here to the extent they have not been distributed.

Exam. Lawton: The exhibit headed "Leace and Interchange of Vehicles by Motor Carriers," will be identified as Exhibit 31.

(Respondents' Exhibit No. 31, Witness Markowitz, was marked for identification.)

Exam. Lawton: The exhibit captioned "Motor Vehicle Trip Lease or Hauling Agreement," will be identified as Exhibit 32.

(Respondents' Exhibit No. 32, Witness Markowitz, was marked for identification.)

[fol. 2705] The Witness: I would like, first, Mr. Examiner, to deal with Exhibit 32 rather than 31. It is more self-explanatory and there is less oral testimony to be added to it.

Exhibit 32 is a proposed motor vehicle trip-lease or hauling agreement which the Commission is asked to prescribe in this proceeding. It was developed by me over a period often years as a result of studies or more than 14 different types of leasing or hauling agreements which came to my attention, or which I requested as a result of preparation for this proceeding.

I find the existing practice of motor carriers is not uniform in that respect. I believe it requires uniformity, and that this Commission by prescribing the actual instrument of lease and terms and conditions to govern it will create that uniformity which is desirable and without which there can be no uniformity of any rules which this Commission may prescribe. The need for uniformity is so great that an examination of any number of existing forms of contract will indicate as many different kinds of understanding between the parties as there are types of leases, and I have incorporated in this proposed form those factors which I consider proper for proper administration.

I call attention to a few which differ from most of the leases so far called to my attention. Under the first full paragraph headed "Lessor hereby," under paragraph (a), in the second line, I have included the word "exclusively" to indicate that partial leasing of a vehicle would be pro-[fol. 2706] hibited, or that the use of a motor vehicle where leased by more than one person at the same time would be prohibited.

Next-to-the-last-line of the same paragraph, "To the same extent as if it were the lawful owner of the equipment"—I believe that is important because I don't see any reason for any different method of approach to the use of equipment, whether owned or leased.

Below the box-like arrangement in which the vehicles to be leased will be set forth in greater particular, I have used these words "Vehicles here described have received

inspection and checking," and then one or two lines below, "and if explosives or other dangerous articles are to be transported, meet the requirements of part 7 of the safety regulations pertaining to safe transportation of explosives", and further down "That an actual physical inspection and check has been made prior to the drawing of this lease."

The emphasis belongs on "actual" and "prior."

Mr. Burton Wheeler: Is this a short-term lease or long-term lease?

The Witness: A short-term lease.

In the terms and conditions of sheet 2 of this exhibit, that section which begins by reading "It is further mutually agreed that (a) lessor-lessee (strike one)"—meaning that one should be removed and the other applied—"shall pay the salary of the driver (and any helpers) used," [fol. 2707] and in the same paragraph it provides that the physical examination shall have been completed as required by the Commission's regulations before the lease is entered into.

Finally, the language just above the signature on sheet 1 of the exhibit, that this entire agreement is evidenced by the signature of those authorized employees or agents who have affixed their signature below, so if there is any departure from the proposed agreement the comparison of the actual operation to the instrument of leasing will show it up immediately.

At this time that is all I have to say about Exhibit 32 except I find that a great many of the so-called owner-operators in practice do not read the agreements which they sign and are inclined to accept whatever is offered by the carrier.

Exam. Lawton: Are you using this form in your own leasing for this company?

The Witness: We are at the present time using an agreement which is not quite as complete as this one, but carries along similar lines.

It is my personal intention in printing any new forms for my company to indicate this agreement.

Exhibit 31, which contains rules proposed to be prescribed I will deal with next, and I will give you now the

testimony which would support the prescription of each of these proposed rules. I have already dealt with subject one by suggesting that the Commission prescribe the form [fol. 2708] in Exhibit 32. Subject 2: "Minimum requirements as to term of leasing or hauling arrangement with respect to time." I would not approve or desire this Commission to approve any lease which was for less than one complete trip, and for exclusive use from one named origin and one named destination, and in the case of vehicles leased to shippers not less than 30 days, such lease to run consecutively, including Saturdays, Sundays, and holidays.

Subject 3: "Proposals that the Commission shall create within the Bureau of Motor Carriers, for the purpose of administering the proposed rules, an Office of Leasing and Hauling Review." Also that is a substitute for the so-called ability of the industry to police itself, which so far has failed.

Subject 4, which is sheet 2 of the exhibit, would by its terms, if administered properly, prohibit or make impossible the leasing of vehicles to shippers for one of two unlawful purposes, (1) to produce a lower total charge than the carrier has published in the tariff, and (2) to permit it in any fashion to extend its operation beyond its certificated authority.

Subject 5 is a question raised with the Commission over the jurisdiction over certain types of lease arrangements whereby certain leasing companies are created and do business on the leasing of vehicles with drivers, and in some cases without drivers, to shippers, and points out more particularly that type of leasing company arrangement which is held in common interest and control by a [fol. 2709] person who is also in control of the motor carrier who is certificated and uses a leasing company for the particular purpose of avoiding that regulation which would otherwise accrue under his certificate or permit; and I have to offer at this time testimony regarding a particular experience which will show the Commission that such abuses do exist.

A motor carrier domiciled at New York City during the past summer filed an application to extend its operating authority to a place in New Jersey to a new plant in the

vicinity of where my company operates its home terminal, and sent copies of Form BCC 15 to its competitors, including ourselves.

Protests were filed against the application and it was set for hearing. Before the hearing was held the carrier had formed a leasing company and gone ahead and leased the trucks to the shipper and performed the entire movement without any authority from this Commission, under the leasing authority it created for itself.

Thereafter the application to operate was denied by this Commission, after which the carrier in question canceled the leasing agreement with the shipper and leased his trucks to another carrier in New Jersey, and that is the way it is now being operated.

It is possible, without any regulations under present-day conditions, for such leasing arrangements to take place. They are taking place, and I have seen it. That is what happened to us.

[fol. 2710] Subject 6 goes to the heart of the problem of so-called "gypsying." In my opinion the chief reason for operating owner equipment as a policy of proper operating convenience is the profit obtained from that type of leasing arrangement. In other words, the difference between the cost of operating owner equipment and operating equipment owned by the carrier holding certificated rights. That is the sole purpose behind so-called gypsying or trip-leasing arrangements.

The person owning the truck can operate more cheaply than the owner itself can. That is a condition that I don't think the Commission can deal with except to regulate. It is there and unless it is abolished—and I would not complain if it were abolished—then it must be regulated and I think the Commission must prescribe rules and regulations to cover.

Subject 7 proposes a rule for proper identification of leased vehicles. One of the principal problems is to find the owner of the leased vehicle. The city from which I come is located on U. S. Highway No. 1, probably the largest truck route between New York and Washington. Thousands of trucks roll that route every day. I have had occasion over the past 15 years to observe names of

persons operating the vehicles and the conditions under which they are operated, and hundreds of times I have seen vehicles operated over that route without the name or address or any identification on the tractor or trailer. I [fol. 2711] have seen these vehicles involved in accidents and involved in violations of the safety regulations of this Act, and I myself have participated in court cases in the City of New Brunswick where persons were in dispute before the court in an effort to determine where the liability lay in an accident involving that type of operation, and the attempt was made by both parties to shift the blame. Proper identification of a vehicle will give the public an opportunity to know where the responsibility lies.

I have suggested that this Commission could not enforce that rule, and I see no chance of enforcing it unless they make a liaison with the police officials of the communities and the States through which the vehicles pass, and have the States assist them and they assist the States in enforcing the law that a commercial vehicle must be identified with the name of the owner and operator.

Exam. Lawton: Isn't it true at the present time that the Commission assists State headquarters, and vice versa, where there are violations?

The Witness: I have asked that question of District 2 and we were told they have no police powers and cooperation of the State is not to their liking at the moment, but I point out that the State laws generally do provide for the identification of commercial vehicles, and if they must be identified by State law and federal law they work together.

[fol. 2712] Subject 8 deals with maintenance of certain specified records by the carrier, which will prove that he has complied with the safety and hours of safety provisions of the Act.

Subject 9 proposes to discard and disapprove that form of compensation which so prevalent, based upon a fixed percentage of the revenue accruing to the carrier and placing his level of compensation on a level which will recognize the party he plays in working for the owner, and will compensate him for the number of miles he transports the lading, and the risk he takes in the number of miles.

I disapprove of any attempt to fix the percentage of revenue on a load and that makes, in my opinion, the so-called gypsy or owner-operator a carrier because he enters into a division on a contract to which he is not a party and has no authority to enter into.

My interest in leasing and interchange practices is grounded on the effect they have on costs and because they affect actual cost rates.

My interpretation of Part II of the Act is that the costs of motor carriers have some direct bearing on the rate structures of motor carriers. Too often, in my experience in this field, I have seen evidence of the fact that motor carriers with large amounts of owner-operated equipment will come before the rate committees and argue that certain rates are compensatory based upon their so-called costs, and all other carriers who are not operating equip-
[fol. 2713] ment of that type arguing that it could not be compensatory under their costs, and I feel that the costs incurred by operators who own their own equipment ought to provide the starting rates based on costs, and I have two experiences in which rates based on the costs of owner-operator equipment were placed in effect in tariffs on file with this Commission, placed in effect below the costs of any operator owning his own equipment.

Recently my company came to me and suggested there was a movement of truckload quantities from a point in Pennsylvania to a place in New Jersey on which our rate was fifth class. We were told that in order to get this business we would have to compete with another carrier who had a rate 8 cents per 100 pounds below our own.

I went to our cost department and asked them to figure the cost of our transporting the traffic, and making a profit on it, and the answer was that every load would incur a specific loss. I then investigated the manner in which the traffic was now being handled because I felt it was my duty to know whether we were operating as efficiently as we ought to, and whether there was a magic formula for producing low rates, and I found this: That the contract carrier handling this business from the point in New Jersey to the point in Pennsylvania was using an owner-operator who had originally come into the area from a

point in Pennsylvania as an owner-operator for another carrier, and he was paid a percentage of the total revenue [fol. 2714] on the shipment and the contract carrier using the owner-operator could not lose because he knew 100 percent of his revenue would not be expended in performing the operation.

I told my company "This is the way it is done," and my company said, "Mr. Traffic Manager, go before the committee and tell them 'We have found an owner-operator, too, and he is willing to do the same thing. He will take a percentage of the revenue we can't afford to move our truck on, and he will take that.'"

I went before the committee with my tongue in my cheek, and the committee turned me down, we took independent action, the rate was established, and we are using owner-operator equipment and that rate which was totally unprofitable was established, and we are operating under it.

I don't think that is good, I don't think that is sensible, I don't think that is sound transportation. I was forced to do it in self-preservation. That was not our company's position. We had no such intention but we were compelled to do it.

There is no way to beat it that I have found to date. One gypsying operation made two and from now on the lid is off and I don't know from where we will go from there.

I think I will end my direct at this time and submit myself to your questions, or those of any other parties.

Exam. Lawton: Did you cover subject 12?

[fol. 2715] The Witness: I believe I said in referring to my Exhibit 32 on sheet 2, with respect to striking one or the other as to who should pay the salary of the driver—that is what subject 12 covers.

It has been almost impossible for me to discover to date what the law is about that payment of the driver because of conflicting rulings from the Social Security Board, from the courts, and the Bureau of Internal Revenue, and we have gotten so many conflicting rulings, and we don't know honestly how that should be done, and I have asked the Bureau of Motor Carriers to tell me how it should be

done, and they say they don't have the answer, so I have provided in my form that it can be done either way. I don't think it is terribly important how it is done so long as the driver gets his wages paid.

Mr. Todd: Mr. Examiner, I wonder if we could have an opportunity to study this proposal before we cross-examine Mr. Markowitz.

The Witness: I did distribute that last night for that purpose.

Exam. Lawton: Did you get a copy last night, Mr. Todd?

Mr. Todd: I did not. It is probably my fault, but I have just seen it this morning, and I know it requires a good deal of study on somebody's part before we can intelligently cross-examine this witness in that he is suggesting something different in the way of regulations than anything we have had an opportunity to consider before.

[fol. 2716] Exam. Lawton: Off the record.

(Discussion off the record.)

Exam. Lawton: Are you gentlemen ready?

Mr. Ellis: I am ready.

Cross-Examination.

By Mr. Ellis:

Q. Mr. Markowitz, first I would like to refer to this A.T.A. proposition. As I understand it, you are not out of harmony with what the A.T.A. has recommended but simply as to the question of enforcement of the principles which were enunciated by that committee to suggest certain further things to be done.

Is that a fair statement of your position?

A. It is not complete, but I think it is a fair statement.

Q. I believe you said you were heard by the A.T.A. at a meeting in New York City.

A. Yes, sir.

Q. Who presided at the meeting, if you recall?

A. Mr. Sutherland.

Q. Do you know anyone else who was there?

A. Other people were there that I knew. It was informal.

Q. Did they give you a respectful and full hearing, an opportunity to develop your train of thought?

A. Yes.

Q. Was one C. J. Williams, who purports to reside in Milwaukee. Wis., there, and did he question you about [fol. 2717] anything you had to say?

A. Was he there? Is he here? I probably would recognize him.

Q. He isn't here, I don't think. He was in St. Louis complaining about what was done, and I wanted to know if he was in New York and questioned you.

A. I don't remember anyone who said he was Mr. Williams.

Exam. Lawton: Off the record.

(Discussion off the record.)

By Mr. Ellis:

Q. Do you have any complaint to express about the way you were treated by the A.T.A. leasing committee?

A. No, sir. Mr. Sutherland treated me very nicely. I have no complaint.

Q. Directing your attention to Exhibit 32, as I understand it from your direct testimony this is the form you suggest be used in the event particularly of trip leasing. Is that right?

A. Yes.

Q. You are not opposed to trip leasing, are you, under proper safeguards and regulations?

A. To your complete question, the answer is "no."

Q. And you are suggesting here by your Exhibit 32 a form by which you believe these safeguards could be placed into actual operation; is that right?

A. That is right.

Q. Now, without passing upon the divisions of Exhibit 32, you have been thinking somewhat along the line I have. [fol. 2718] I had in mind suggesting to the Commission on brief that some uniform form of lease for trip leasing be adopted so there would be a uniform form throughout the country.

A. Mandatory only.

Q. You think it should be mandatory?

A. Yes.

Q. I have no objection to that. You agree with me that all over the country there has been this form and that form of lease, none of them perhaps covering the meat of the situation entirely?

A. That is correct.

Q. If a document such as your Exhibit 32, or something like that, if that is not found satisfactory by the industry as a whole—you would have no objection to trip leasing on that basis?

A. Not if it were enforced, Mr. Ellis Writing rules is one thing and enforcing them is another.

Q. There are a lot of rules now and the trouble seems to be now that some they claim are not being enforced. I have heard witnesses like Mr. Girard who says there has been a complete breakdown of enforcement. You know that, don't you?

A. Yes.

Q. And your proposed rules, as set out in Exhibit 31, would be to strengthen the hand of the Commission in enforcing rules and regulations and seeing that an agree-[fol. 2719] ment like Exhibit 32 is carried out.

A. Yes.

Q. You engage in trip leasing now, don't you?

A. Yes, to an extent.

Q. But carriers, such as your own, and many others who own a large number of pieces of equipment, find it necessary to supplement that fleet by trip leasing; is that right?

A. That is correct.

Q. One other thing and I have completed my examination.

I was interested in what you said about the placing of the driver of an owner-operator trip-lease vehicle on the pay roll of the carrier leasing the equipment. As I understood, you found that there were considerable differences of opinion as to the legal status of such a person.

A. Yes, sir; there is.

Q. Particularly in the federal and State laws as to Social Security, and so forth?

A. Yes.

Q. And you feel it is unimportant so long as the driver is paid and subject to proper scrutiny and supervision?

A. As I stated, yes.

Q. I would like your opinion on one other matter: The drivers' logs are the real keystone and cornerstone of hours of service regulations.

[fol. 2720] A. They are the record.

Q. It is possible to falsify those if a man or driver is so inclined, isn't it?

A. That is true.

Q. We regarded that as a deplorable condition and we don't believe it is generally prevalent, but there are good and bad men in the ranks of drivers the same as any place else; do you agree with that?

A. Well, yes. There is a proportion of bad men.

Q. Without criticizing drivers, let me ask you this: Isn't it true that a driver who is employed by a company and drives a company-owned piece of equipment could falsify his records the same as if he were an owner-operator.

A. I think he could.

Mr. Ellis: That is all.

Mr. Diehl: I would like to reserve my cross-examination.

By Mr. Burton Wheeler:

Q. There are some bad men and crooks in the industry, as we call them, are there not?

A. Yes.

Q. That has been the experience in the trucking industry. To what extent do you use trip leasing?

A. Only to that limited extent which I described, peak periods, light routes, one-way hauls when there is no possibility of balancing the operation.

Q. When you have to compete with other people who are engaged in trip leasing because of the fact that you [fol. 2721] cannot make a profit otherwise?

A. Both of those statements are true.

Q. Yes. Now, the man who does not engage in trip leasing at all, but owns all his own equipment, as a matter

of fact, cannot compete with some of the people who are engaged in these practices such as you have described?

A. No, he cannot. Conditions are unequal.

Q. That is one of the reasons why some of the people engage in trip leasing almost exclusively are in favor of trip leasing as against owning their own equipment, is it not?

Mr. McAuliffe: I object to that question. It is speculation and asking for a conclusion.

Exam. Lawton: Is that your opinion?

Overruled. You may answer.

The Witness: I say it is a very powerful influence on that type of operation.

By Mr. Burton Wheeler:

Q. Do you know who made up the committee who drew up the resolutions for the A.T.A.?

A. Frankly, the only gentlemen whom I remember—and that is my weakness—is the chairman himself. I happened to know him.

Q. And he is engaged almost entirely in trip leasing, is he not, or owns very little of his own equipment?

A. I believe you are right. I don't want to speak for Mr. Sutherland, and how he operates.

[fol. 2722] Q. And you don't know how many of the others that made up that committee were engaged in trip leasing?

A. No; but, of course, the majority report would indicate the majority of the committee were——

Mr. Idol: I object. The witness already has testified he didn't know who was on the committee other than Mr. Sutherland.

Exam. Lawton: I think that has been pursued far enough.

By Mr. Burton Wheeler:

Q. As I understand, you qualified your statement by saying that you believed that these agreements would be all right providing they were enforced. How many people do you think it would take to enforce rules of that kind?

Mr. Idol: Objection, Mr. Examiner. It is purely speculative.

Exam. Lawton: Overruled.

The Witness: It would be hard for me to tell you how many people they need. I can only refer you to subject 3 on Exhibit 31 in which I suggest that such an office be created, and I am sure Mr. Blanning and his people know how many people to ask the Commission for.

If it cannot be done, I suggest that trip leasing be abolished entirely.

By Mr. Burton Wheeler:

Q. Let me ask you this: From your experience—and you have had a vast experience—you say you are on Route 1 where probably more trucks pass up and down than almost any other route in the United States. That is true, is it [fol. 2723] not.

A. That is true.

Q. And you have had an opportunity to see these trucks passing day in and day out for how many years?

A. Almost 15.

Q. Almost 15 years, and you have seen many, many trucks pass day after day where they did not comply with the rules and regulations of the Commission?

A. That is right.

Q. You have seen accidents occur on that route and it was difficult to tell who was liable for the accident?

Mr. Idol: I object to that question and others of like leading tenor.

Exam. Lawton: This is cross-examination.

Mr. Idol: I submit it may be technically cross-examination but it certainly is not in fact.

Exam. Lawton: It is a little repetitious because it was thoroughly covered on direct. We will have no argument, please.

Mr. Burton Wheeler: I expect to follow it up.

By Mr. Burton Wheeler:

Q. Did you answer the question?

A. I believe I said "yes."

Q. Even though this lease was put into effect your idea is it would have to be mandatory; that is, the Commission would have to make it mandatory for them to do it?

A. Anything we do has to be made mandatory.

[fol. 2724] Q. Even though it is mandatory how would it be possible to keep people from not living up to the agreement, scattered from one end of the country to the other?

Mr. Ellis: To which we object. It is just asking this witness as to whether the Government of the United States is powerful enough to enforce its own laws. Laws, rules and regulations governing the trucking industry are not the only laws of the United States. We have had laws of various kinds and this witness is being asked to interpret how the Federal Government would force compliance with lawful regulations of its own. It is an entirely improper question to ask this man.

Exam. Lawton: He may have some further ideas about how it is to be enforced other than what he has given us.

The Witness: I lost the trend of the question.

(Question read.)

The Witness: I am afraid that the answer to that is that someone won't live up to it and that is why we have to have the office created to keep them in line. People will always depart from any regulation, I guess.

Exam. Lawton: And if they are detected it would be up to the courts, wouldn't it?

The Witness: Generally, I would say so. We catch people doing all kinds of wrong things and apparently somebody knows what to do about it.

By Mr. Burton Wheeler:

Q. I didn't catch that.

[fol. 2725] A. We always have some kind of departure from any regulation so we have to have a police force.

Q. You are familiar with the railroad regulations with reference to interstate commerce, are you not?

A. Yes.

Q. The difference between the regulation of the trucking industry and the railroads is, of course, there are so

many different people engaged in the trucking industry, more than in the railroad industry, and consequently it is easier to regulate railroads and see that they live up to rules and regulations than it is to regulate people scattered all over the country?

A. It is a larger problem and much more difficult.

Mr. Idol: Mr. Examiner, I move we get back to the case and argue it on brief.

By Mr. Burton Wheeler:

Q. One of the things which you stated was that this trip leasing had a tendency to break down the rate structure.

A. Yes, sir.

Q. Would you explain just how it has a tendency to break down the rate structure?

A. Because the carriers who operate in that manner state that their costs are much lower than that of the operators who don't do it that way. They insist upon it. They keep going down.

Exam. Lawton: You mean when they come to the conference and want to establish a low rate?

[fol. 2726] The Witness: It will be lower than the lowest rate we have heard so far, and generally that type of operator requests it.

Exam. Lawton: You are a member, I believe you said, of the Middle Atlantic Conference.

The Witness: That is right.

By Mr. Burton Wheeler:

Q. Is there a tendency for these people to put in a lower rate themselves without going to the conference at all?

A. Not if they are members. If they are members they take independent action usually if they are turned down. They have done it. I don't know that they always do it. It has been a tendency.

Q. They do do that?

A. Yes.

Q. Can you explain why they can do it cheaper that way than they can when you own your own trucks?

A. About the best answer I can give you is that they know their costs that way awfully quick. It is a matter of knowing you receive so much revenue and your expenses will be somewhat less.

Q. Is that because of the fact that their costs of operation are lower; that is, that the men that they hire they pay a lower wage, or—

A. They are completely relieved of the burden of any determination. All they know is it is going to be less than they got for the load.

[fol. 2727] Exam. Lawton: It is usually a division of the rate?

The Witness: Yes, and because it is that way the owner ceases to be interested in what it is.

Exam. Lawton: And he knows he will get 25 or 30 percent of the rate?

The Witness: And he knows if anybody loses it will be the carrier and not him.

By Mr. Burton Wheeler:

Q. What have you to say as to the owner of the truck? Can he maintain and operate his truck cheaper than the owner of a number of trucks engaged in that business?

A. On maintenance cost we can operate cheaper than he can.

Q. How can he stay in business if he operates at a less rate than you do?

Mr. McAuliffe: How can this man testify as to how a number of owner-operators can stay in business? What does he know? I object to that.

Exam. Lawton: He should have an opinion on that.

Mr. McAuliffe: I think he should be qualified to show the basis of his opinion. I would like to ask some questions and see what he knows about any particular owner-operators.

His guess as to what owner-operators may or may not do, if he has no firsthand information I don't think is helpful to the Commission.

[fol. 2728] Exam. Lawton: There is some merit in that objection.

Did you have firsthand information on maintenance of motor vehicles by— .

The Witness: I was dealing with maintenance alone. The owner-operators we employ don't have any. They have it done in a garage. Some do their own work. I don't know of any of them that have shop facilities and a force of people engaged in inspecting the truck.

The lease goes beyond the truck. It almost turns into a contract for the man as well as the truck.

I didn't know you could do things like that today but I am told you can. The owner becomes a chattel and sells himself and he doesn't care whether he produces the same result. Our drivers are interested. I know you represent the American Federation of Labor and you make them interested.

The owner-operator wears the same button on his hat but they are not interested. They will trade the piece of equipment with themselves as a unit and let it go at that and disregard the human equation.

By Mr. Todd:

Q. Mr. Markowitz, I believe in your direct testimony you stated that you employed a trip lease type of operation in some instances where your traffic is unbalanced.

A. There are certain routes that we operate where traffic is generally unbalanced. There is one in particular that I know of.

[fol. 2729] Q. What route is that?

A. A route going up New York State, up the Hudson River, beyond the New York metropolitan area.

Q. Is it heavier northbound than southbound?

A. That is correct.

Q. In those instances where you used trip lease equipment on that particular route, are you under any obligation to the owner-operator at all when he delivers his northbound load?

A. That particular route we are talking about consists of a roundtrip lease, not a one-way trip lease.

Q. I see. It is not the same type of trip lease that we have in the industry where the carrier sends the owner-

operator out and upon delivery of the load he has no further responsibility towards him?

A. We have very, very few such arrangements. They are not prevalent at all.

Q. Are you familiar with that type of operation?

A. Yes, sir.

Q. Under those circumstances does the carrier using that trip lease type of operation have an economic advantage over a carrier who is operating his own truck; that is, where there is an unbalance of traffic?

A. Yes, he does.

Q. Could you point to anything in your lease form, which is Exhibit No. 32, which will correct that economic disadvantage that a carrier has who operates his own [fol. 2730] equipment.

A. If it is read in connection with the proposed rules it will prohibit a percentage of the revenue and that will be one method of preventing it.

The lease agreement calls for compliance with certain factors which are now either disregarded or overlooked, that would make the instrument not only binding on the parties but a criminal offense to depart from it.

Q. Suppose your proposed regulation did go into effect and it required that instead of paying a percentage of the revenue but a mileage payment be arrived at for owner-operators and the trip lease method of employment was used paying for the one way under a mileage arrangement. Wouldn't the operator using that type of arrangement have the same economic advantage in that he is not paying to get the vehicle back whereas the carrier who operates and owns his own equipment would pay to have it brought back?

A. I have not said I would prohibit one-way trip leases but I told A.T.A., and I will tell this committee, they should not be permitted except under most stringent regulation.

Q. What type of regulation do you know of that would eliminate that economic factor as long as there is one-way trip leasing?

A. Frankly, I don't know of any.

Q. Frankly, you don't know of any?

A. I can't conceive of emergency operations. They were [fol. 2731] encouraged during the war and the war brought on most of our problems.

Q. You would say that except under emergency conditions, such as a war—

A. I don't like to see regulations run a war.

Q. Is it your testimony that except during wartime, or similar emergencies, that the one-way trip leasing of the gypsy operator should be abolished?

Mr. Ellis: I object. Mr. Todd is putting words in the witness' mouth.

The Witness: I would either regulate it in such a way that it would be absolutely clear as to where the responsibility lay and there would be no economic advantage—if that were impossible I would abolish it.

By Mr. Todd:

Q. Do you at this time have any regulation to suggest to the Commission that would eliminate the economic advantage we have been discussing?

A. The one-way trip lease?

Q. Yes.

A. I have not. I don't think of any right now. I think it is a social problem.

Q. You gave an illustration of a carrier in New York City leasing some trucks to a shipper. Do you know whether under that arrangement the carrier lessor furnished the driver in connection with the operation of those trucks?

[fol. 2732] A. The document said he did not. The trucks had the drivers on them.

Q. I don't understand your answer.

A. The agreement that was drawn called for the shipper to put his own drivers on the vehicle. The persons operating the vehicles were not on the pay roll of the lessor but on the lessee's.

Mr. Ellis: Did you see the document?

The Witness: I did. That was the defense the lessor offered.

By Mr. Todd:

Q. So you believe by some subterfuge or indirect means the lessor could furnish the driver. Is that correct?

A. That is my opinion.

Q. Are you familiar with the transportation conditions in companies rather generally around New York City?

A. Yes, sir.

Q. I take it, then, you are familiar with the fact there are persons engaged in business in New York City exclusively in the leasing of motor equipment that are not connected with any carriers at all?

A. I don't agree with the second part of your question. The first part is true and the second part is not true. They are connected by a series of interlocking arrangements to a trucking company, different corporate names but the same ownership when you go beyond the corporate veil. [fol. 2733] Q. You don't know of any leasing companies in the City of New York that have absolutely no connection with any carrier whatsoever?

A. I know one such company.

Q. What is the name of that company?

A. I think they are called the Metropolitan Distributors. That is the only one I think of now.

Q. Isn't Metropolitan Distributors a large operation engaged exclusively in leasing trucks to shippers?

A. Exclusively. They don't attempt to act as a carrier in any way whatsoever and I never heard of them making a trip lease either.

Q. On this particular situation that you gave as an example, wouldn't it have been possible for that shipper to have leased vehicles from Metropolitan Distributors had they not leased them from this particular carrier?

A. I don't know that they ever approached Metropolitan Distributors. From what I know of that particular situation, I doubt it.

Q. That is the type of business—that is, the leasing of trucks without drivers, to shippers—that Metropolitan is engaged in and is seeking?

A. I know that Metropolitan Distributors are not my competitors. We don't offer the same type service.

Q. They do offer a truck service to shippers?

[fol. 2734] A. I think they do.

Q. Without drivers?

A. I can't be sure of that.

Q. And you don't consider that type of operation as competitive with your common carrier service?

A. No, not the way it is operated, no. Some day someone might get a hold of it and operate it in a way which would make it competitive. Then I would worry about it.

Q. I don't believe in your direct testimony you indicated whether you are a member of the bar of any particular State?

A. A registered practitioner.

Q. So in submitting this lease agreement you are not indicating as to its legal effect, or anything of that type. It is just provisions that you think ought to be in the lease?

A. I should have covered that. The company lawyer approved this agreement. It has been approved by a man who is a member of the bar of the State of New Jersey.

Q. So it is his opinion it would be legally binding?

A. That is correct.

Q. One other question: You recognize, do you not, Mr. Markowitz, that the Interstate Commerce Commission, under the law, as it is presently written, has no jurisdiction to regulate the type of lease operation conducted by Metropolitan Distributors of New York?

Mr. Ellis: We object. That calls for a legal conclusion. [fol. 2735] Mr. Todd has very carefully pointed out this man is not a lawyer.

Mr. Todd: I withdraw my question, Mr. Examiner; I think Mr. Ellis is right.

Exam. Lawton: Any further questions?

Mr. Pou: No questions.

By Mr. Idol:

Q. In connection with your proposal to eliminate percentage of revenue as a method of computing compensation, let us assume you had an arrangement with an independent operator, or had just entered into one on which 70 percent of the revenue would amount to $100. Would it be possible for you to so word your agreement as to give him $70?

A. Yes, that subterfuge is being used. I hope the Commission can put an end to it.

Q. Have you any suggestions as to that?

A. I hope the Commission has the power to look into the arrangements and if they find out that was the result they could be declared unlawful and the person prosecuted. It is $100 for this load and $85 for that; that will show up in the records. It would be difficult for the man to explain how he found so many different items for several different days. He would be caught. He would become an eager-beaver and do it again and again until caught.

Q. You do think it would be possible to translate a percentage of revenue into some other figures?

[fol. 2736] A. I have watched it.

By Mr. Lieberman:

Q. The operations of your company are between the Greater New York City area, on the one hand, and, on the other, that area of New Jersey beyond the so-called short-haul area, and Philadelphia. Is that right?

A. That is not the only one.

Q. That is the principal operation?

A. Yes.

Q. And you operate company-owned vehicles?

A. Yes.

Q. And you have become familiar with the operators of the New York-New Jersey short-haul area, as well as those operating between New York and Philadelphia?

A. Yes.

Q. Based on your experience and knowledge, will you tell us whether it is not true that the majority of the operators in the short-haul area in New York-New Jersey do not operate their own equipment?

A. The majority of the common carriers do own and operate their own equipment.

Q. And leasing, as described by you, is a very uncommon practice in that area?

A. Except leases between shippers and carriers.

Q. With respect to owner-driver leasing, it is true, is it not, there is an insignificant amount of leasing in the New York-New Jersey area?

[fol. 2737] A. Owner-driver only?

Q. Yes.

A. I agree with you because there are no trips.

Q. The practice certainly isn't prevalent?

A. If you don't have a trip you can't make a trip lease.

Q. With respect to the New York-Philadelphia area, what is the situation with respect to owner-driver leasing?

A. It is growing and it is becoming a problem.

Q. Do not the majority of companies own and operate their own equipment in that area?

A. They still do but the percentage is shrinking.

Q. And your statement with respect to practices prevailing in the New York-New Jersey short-haul area and the New York-Philadelphia area represent a very insignificant amount of the traffic being handled in that fashion?

A. I don't understand that question.

Q. I withdraw it.

Is it not correct that a small proportion of the traffic or tonnage moving between the New York-New Jersey short haul area and New York-Philadelphia area is moving on leased equipment?

A. I am inclined to answer by stating how it grew. I think it is about 20 percent now and it was a lot less last year.

Q. The opinions you have stated and the facts you have cited relate to the general commodity carriers?

[fol. 2738] A. Yes. I don't think I would dwell on specialized carriers like household goods carriers.

By Mr. Arpaia:

Q. Mr. Markowitz, you keep time records on your own employees, don't you?

A. We keep time records on our own employees and try to keep them on the owner-operators, too, but it is difficult.

Q. Your own employees punch in time cards?

A. Yes, sir.

Q. When you answered Mr. Ellis' question about the falsification or the ease with which drivers' logs are falsified, you do have a check on the logs of your own employees?

A. You do. All you do is find differences and try to get the employees to reconcile them for you.

Q. But you have no way of checking the drivers' logs of the gypsy?

A. The regulation I have laid down calls for them to return the log to us. It is placed in our file.

Q. But you have no time card against which to check the log?

A. That is true.

Q. And you do with your own employees?

A. That is correct.

Q. In your opinion, Mr. Markowitz, does trip leasing promote sound conditions in the motor truck industry?

A. I am sorry, it does not.

Q. And if you had a choice you would abolish trip leasing altogether; is that right?

[fol. 2739] A. I would abolish the type of trip leasing I have seen. I would not abolish anything that is good, but I would abolish anything that is bad, and that is bad.

Q. You would abolish that that you have seen?

A. Yes.

Q. If it could not be abolished entirely do you agree it might be better to restrict it in amount, in volume?

A. If this Commission has that power I think that a fair percentage could be arrived at by which a carrier could augment his fleet by some owner-operated vehicles.

Q. When you use the gypsy, the gypsy makes the pick-up, doesn't he?

A. Sometimes it is a terminal operation and sometimes a pick-up. I would say both are being done.

Q. If the gypsy makes the pick-up you do not use a pick-up man?

A. That is right.

Q. If he makes a delivery of the same load you don't use a delivery man?

A. In our section of the country we just cannot do that.

Q. I mean, if that were true——

A. We have to use all three men.

Q. You described an operation where a contract carrier, because of the rate which you had established, forced you to compete by using the same tactics and the same devices; is that right?

[fol. 2740] A. That is right.

Q. In that particular instance did the gypsy pick up the load?

A. Yes, that is right.

Q. And did the gypsy deliver the load?

A. He did, and he moved it over the road.

Q. He did the entire thing?

A. All three.

Q. And you thereby saved the cost of pick-up and delivery?

A. That is right.

Q. That gypsy does not buy gasoline any cheaper than you do?

A. It costs him more.

Q. He does not have a cheaper cost on tires?

A. It costs him more.

Q. He does not have a cheaper cost on oil?

A. The same answer.

Q. What is the percentage of your operating cost represented by labor in your company?

A. It keeps growing. The figure as of December, 1948, it is up to about 67 percent of the total cost now and still climbing.

Q. Is it a reasonable presumption, therefore, that the difference in the cost of the gypsy is represented by the labor employed?

Mr. Idol: I object.

Exam. Lawton: Read the question.

(Question read.)

[fol. 2741] Exam. Lawton: Overruled. He may answer.

The Witness: Yes. The gypsy sells himself.

By Mr. Arpaia:

Q. If those costs between the gypsy and a bona fide operation are so totally unequal, do you consider it makes for fair competion between carriers?

A. It makes for unfair competition.

By Mr. Diehl:

Q. Mr. Witness, what is the average length haul in your company's operations?